

HSE Group as part of the electricity sector, which is dedicated to take the necessary steps on the path to decarbonisation and climate neutrality by 2050, welcomes the process of reviewing the State aid guidelines to be coherent with the ambitious Green Deal objectives with regard to energy and climate and also to extend the scope to new areas and technologies. With this in mind, it is necessary to point out that the CEEAG provide helpful guidance to the Member States as how to support all the technologies that can contribute to the achievement of their National Energy and Climate Plans, as well as their national coal phase-out strategies.

HSE Group strongly believes that successful transformation of coal regions is key to a successful decarbonisation of the EU. Therefore, we welcome the fact that a special emphasis is given in the CEEAG to aid for coal activities.

Whereas economic and/or political decisions on a coal-phase out can be enforced rather quickly, environmental, social, and energy consequences of such decisions will last for decades. Therefore, well-dosed and focussed State aid measures will be crucial for the successful transformation of coal regions into sustainable societies and their integration into a circular economy.

While it is on the one hand necessary for the CEEAG to be coherent with the relevant climate and energy legislation (e.g. “Fit for 55” package that has just been presented by the Commission), HSE Group shares Eurelectric’s opinion, presented in its CEEAG Response Paper, that *“in the short to medium term, it is premature to link the state aid guidelines to the taxonomy regulation, since the latter does not take a system-wide perspective recognizing the complementarity of different decarbonisation options and sufficiently value the contribution of transition technologies.”*

While fossil fuels are in fast decline and the share of intermittent renewable energy sources (RES) is rising, gas-fired capacity (running on renewable/low-carbon gases in the long-term) will continue to play a crucial role in ensuring security of supply, especially in the regions affected most by the coal phase-out processes. The latest IEA report »Net Zero by 2050: A Roadmap for the Global Energy Sector«<sup>1</sup> in its projections shows that natural gas will still represent 23% of the global energy mix in 2050. Hydrogen will play an important role - 15% hydrogen blending is anticipated by 2030 at a global level, which means 6% decrease of fossil gas related emissions.

#### **Section 4.1 – Aid for the reduction and removal of greenhouse gas emissions including through support for renewable energy**

HSE Group believes that State aid measures in promoting renewable energy projects are in some cases, especially where there are high environmental and spatial limitations, crucial for the achievement of

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<sup>1</sup> [Net Zero by 2050 - A Roadmap for the Global Energy Sector \(windows.net\)](#), May 2021

national climate and energy targets. In its assessments the European Commission should take into account more significantly national specifics, especially in electricity generation portfolio, permitting regimes/concessions, environmental limitations. Technological neutrality as well as size independency of the projects supported with State aid should be respected.

In this context HSE Group welcomes the provisions under paragraph 83 of the CEEAG regarding eligibility assessment, which states, *inter alia*, that a more limited eligibility does not unduly distort competition where a Member State provides evidence that eligible sectors or innovative technologies have the potential to make an important contribution to environmental protection and deep decarbonisation in the longer term, particularly in terms of cost effectiveness. By that we can understand that large projects, such as large hydro power plants, are eligible for State aid under the CEEAG, since they would contribute significantly to the country's national share of RES and thus to the achievement of decarbonisation objectives.

Further, when applying the State aid rules, the Commission should also consider that increasing the share of intermittent RES and phasing-out reliable baseload, needs guarantees for a required level of a certain reliability standard, different complementary flexibility options and technologies (including deployment and repowering of hydropower including reservoir and pumped storage plants, battery storage, demand side response). Such measures are necessary for the needed investment to materialize.

#### **Section 4.6. Aid for the remediation of contaminated sites, for the rehabilitation of natural habitats and ecosystems and for biodiversity and nature-based solutions** (comment on overall consistency of the State aid legislation with the environmental legislation and climate policy goals)

HSE Group is convinced that Member States must be able to assess and choose the most suitable mechanisms under their specific conditions and circumstances to achieve more ambitious climate targets, including a suitable balance between the necessity of achieving higher shares of RES and protecting biodiversity. For example, Slovenia has a 38% share of NATURA 2000 sites, which represents the largest share of protected national territory among all EU Member States, which makes developing and spatial planning of new RES projects very challenging. Slovenia did not manage to reach its targeted 25% share of RES in gross final energy consumption by 2020 and will have difficulties contributing to the enhanced 2030 overall EU RES target. Namely, Slovenia has additional unused hydropower potential that could contribute significantly to reaching the national 2030 targets. Indeed, 1/3 of the total electricity generation in Slovenia is currently provided by hydropower and thus represents an incremental element of security of supply, combined with hydropower's flexibility and storage characteristics.

We thus respectfully request the Commission to encourage, in the frame of the CEEAG, the Member States to consider all the available RES potential to achieve the 2030 climate targets, bearing in mind all the necessary measures in accordance with the relevant environmental legislation and considering the effects on biodiversity.

HSE Group also calls for ensuring the overall consistency between relevant environmental legislation (e.g. Water Framework Directive, Natura 2000 and Habitats Directives) and the CEEAG proposal.

#### **Section 4.8 – Aid for the security of electricity supply**

Capacity mechanisms can represent an important tool for a Member State to ensure security of supply, especially during the transition to climate neutrality. The CEEAG should be consistent with the

Regulation (EU) 2019/943 on the internal market for electricity,<sup>2</sup> the results of the sector inquiry on capacity mechanisms<sup>3</sup> and previous Commission decisions on national capacity mechanisms.

This is particularly important to note regarding paragraph 326 draft CEEAG, where the Commission, on the one hand, recognises that new investment in energy generation based on natural gas may support security of electricity supply, but on the other hand, highlights, that it may aggravate negative environmental externalities in the longer term. Regulation (EU) 2019/943 on the internal market for electricity is clear on this, as it provides requirements regarding CO<sub>2</sub> emission limits for capacity mechanisms in Article 22 and the CEEAG should not put in place any conditions that go beyond this requirement.

#### **Section 4.10 – Aid for district heating or cooling**

HSE Group supports the gradual transition away from inefficient fossil-based heating solutions towards full decarbonisation by 2050 according to principles of just transition, but points out that every region has its own specifics and the pace towards achieving climate goals can vary. It is therefore relevant to consider different technologies and sources, which fit different local needs. For example, in the SAŠA coal region in Slovenia, energy efficient district heating system powered by mostly waste heat from the coal power plant is one of the main elements, responsible for significantly reducing air pollution in the region that consequently has one of the highest air qualities in the country. Increasing the share of RES in district heating should definitively be a priority, but it should be understandable that modernisation and reconstruction can take longer in some regions, which the draft CEEAG should take into consideration. In light of the above, for instance, the three-year goal set in paragraph 343 draft CEEAG appears to be too strict.

#### **Section 4.12 – Aid for coal, peat and oil shale closure**

##### **Section 4.12.1 – Aid for early closure**

##### **Paragraph 371: Condition of profitability of coal, peat and oil shale activities**

As this type of aid is intended to compensate for lost profits caused by a premature coal phase-out based on Member State decision to accelerate a market driven transition by prohibiting the generation of power based on coal as of certain date, we understand that the profitability is a precondition. However, the CEEAG should reflect market conditions, notably when profitability of coal activities is heavily dependent on CO<sub>2</sub> prices. The profitability can consequently change during the aid notification process. Also, the notion of “profitability” should take into account individual circumstances of power plants and coal mines that lead to very different operating costs, depending, inter alia, on the technology used (including differences in operating costs between underground and opencast lignite mines). These differences should be duly reflected in the CEEAG, and the notion of “profitability” defined in a way as to take this different circumstance into account.

##### **Paragraph 373: The closure of the coal, peat and oil shale activities no later than one year from the award of the compensation**

As we appreciate the recognition by the Commission that early closure of coal activities should be rewarded a form of compensation for lost profits due to ending coal activities earlier than the end of their economic lifetime. The Commission should, however, recognise that mine and coal power plant closure processes are complex. It takes years for all the measures and closure works to be implemented,

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<sup>2</sup> Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity, OJ L 158, 14.06.2019, p. 54-124.

<sup>3</sup> European Commission, Final Report of the Sector Inquiry on Capacity Mechanisms, 30.11.2016, COM(2016) 752 final.

including the mine safety protocols after closure. Also, the one-year deadline is too strict if you take into account social aspects regarding the loss of jobs.

**Therefore, we believe that the proposed one-year deadline for closure of the coal activities (coal power plant or coal mine) after receiving compensation (paragraph 373) is unrealistic in practice for many Member States.** The timeline should be significantly extended as to consider the necessary timeframe to negotiate, develop and implement the proper closure programmes and new activities that will foster a just transition and gradual transition away from coal towards a carbon neutral energy production. The Commission should take into consideration that the Member States are in the process of adopting Territorial Just Transition Plans, which will include just transition activities and programmes to offset socio-economic challenges deriving from the transition process. Such plans, which will extend well beyond one year, could risk being incompatible with the currently proposed one-year deadline in paragraph 373 draft CEEAG. When Member States decide to close a coal mine or coal power plant the CEEAG should recognize a margin of discretion for the Member States to determine the financial burden for the companies and regions and compensate them accordingly, during the appropriately long and on case-by-case determined timeframe.

The Commission should also have in mind national specific situations when it comes to just transition processes, including different timelines of the closing and restructuring process. Security of supply element must be considered as well, especially for countries with high share of coal in their energy mix and disproportionate large single coal unit MW capacity relative to the total national capacity installed. Resource adequacy assessments conducted at European and National level should be considered. We believe all relevant legislation and strategies that affect the just transition processes at the EU and national level must be coherent, including State aid guidelines, which represent an important basis for measures related to the coal phase-out.

#### **Section 4.12.2 – Aid for exceptional costs**

We welcome the Commission's proposal to allow aid for "exceptional costs" such as significant social and environmental costs following the closure of uncompetitive coal, peat and oil shale activities. This is in line with our view that it is necessary to provide an appropriate policy framework for long-term support of the just transition in regions that are heavily dependent on coal.

The HSE Group sees decarbonisation-supporting State aid measures as a necessity for a successful clean energy transition in the EU.

We understand this measure in part as an extension of the Council Decision of 10 September 2010 on State aid to facilitate the closure of uncompetitive coal mines.<sup>4</sup> We welcome the recognition by the Commission that there are coal mines that may require aid for exceptional costs after December 31, 2027, when the mentioned Council Decision expires.

#### **Need for a separate section on Aid for coal, peat and oil shale activities**

Nevertheless, we would like to stress that there are several uncompetitive coal mines that may also require aid to cover current production losses, as defined in the Council Decision of 10 September 2010 on State aid to facilitate the closure of uncompetitive coal mines, which required the phase-out of the coal production until December 31, 2018. This type of aid is omitted from the CEEAG, and we call on the Commission to assess this omission again, keeping in mind specific cases in individual Member

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<sup>4</sup> Council Decision of 10 December 2010 on State aid to facilitate the closure of uncompetitive coal mines (2010/787/EU), OJ L 336, 21.12.2010, p. 24-29.

States, especially when electricity production fueled by coal from such mines, is based on BAT technology by meeting all strict environmental standards.

Therefore, we propose an additional measure, which could facilitate the just transition in Member States, which are still largely dependent on coal, peat and oil shale activities. We believe that the CEEG should also include a type of aid that covers current production losses of coal power plants and coal mines, as was provided for uncompetitive coal mines with Council Decision of 10 September 2010 on State aid to facilitate the closure of uncompetitive coal mines. Our proposal is to reinstate this aid category and include in the CEEAG the following category of aid:

### **“Aid for efficient exit from coal, peat and oil shale activities”**

#### *Rationale for the aid*

Electricity production in some Member States is still largely dependent on coal, peat and oil shale activities. This means that in this case, we can talk about the national interest of the Member States and the significant energy dependence on the activities of coal, peat and oil shale. It is crucial that these countries focus as effectively as possible on fulfilling all their potential to achieve a just transition, which the Member States will achieve, inter alia, by closing down coal, peat and oil shale activities.

In the Member States where it can be said that their electricity production is still largely dependent on coal, peat or oil shale activity, they may decide to speed up the transition to a decarbonised society also by helping to effectively exit coal, peat and oil shale in the form of covering current production losses for the orderly winding down of activities in the context of a closure plan.

#### *Scope and supported activities*

This Section sets out compatibility rules for measures taken to compensate for the early closure of uncompetitive coal, peat and oil shale activities that have in place a dedicated closure plan, in line with EU climate targets for 2030 and 2050.

Measures covered by this section can, in the Member States facing the above and similar cases, make a significant contribution or at least facilitate the development of certain economic activities with the potential to fulfil the transition to a carbon-neutral economy. However, in the absence of the measure, a just and socially sustainable transition may not take place to the same extent and/or may give rise to extensive disruptions in the given Member States' electricity production. Coal power plants and coal mines are often the biggest employers in the transition regions and can contribute significantly to the restructuring process of the region. Consequently, the predictability and legal certainty introduced by such measures can help to facilitate the ordered closure of coal, peat and oil shale activities.

#### *Incentive effect*

The measure needs to trigger a change in the economic behaviour of the operators, which close down their coal, peat and oil shale activities earlier than the end of their economic lifetime. To determine whether this is the case, the Commission will compare the effects of the measure with a counterfactual scenario without the early closure due to ETS and/or other EU-wide schemes, and related compensation. The closure of the coal, peat and oil shale activities should be in line with adopted EU climate goals for 2030 and 2050. The measure should not lead to a circumvention of the rules applicable to measures for security of supply.

#### *Necessity and appropriateness*



Compensation for the effective exit from coal, peat and oil shale activities will facilitate the execution of all the necessary legal and other procedures to be carried out for the effective closure of coal, peat and shale activities, and a just transition, also through enabling the development of new economic activities at the valuable energy sites. It will help to avoid possible legal disputes with the operators and ensure legal certainty and predictability as well as enable a controlled phase-out of electricity production still largely dependent on coal, peat and oil shale activities.

The aid notified must exceed the difference between the foreseeable production costs and the foreseeable revenue for a coal year. The aid actually paid must be subject to annual correction, based on the actual costs and revenue, at the latest by the end of the coal production year following the year for which the aid was granted.

The amount of aid per tonne coal equivalent must not cause prices for Union coal at utilisation point to be lower than those for coal of a similar quality from third countries.

The coal production units concerned must have been in activity on 31 December 2009.

The Member States must establish a plan to take measures aimed at mitigating the environmental impact of the production of coal by production units to which aid is granted pursuant to this section, for example in the field of energy efficiency, renewable energy or carbon capture storage.

#### *Proportionality*

In order to minimise the distortion of competition in the internal market resulting from State aid to facilitate the closure of uncompetitive coal mines, such aid should be strictly limited to coal production units that are irrevocably planned for closure.

The aid must in principle be granted through a competitive bidding process on the basis of clear, transparent and non-discriminatory criteria. This requirement does not apply where the Member State demonstrates that a bidding process is unlikely to be competitive for objective reasons. This can, for example, be the case where the number of potential participants is limited, provided this is not due to discriminatory eligibility criteria.

If the aid is granted through a competitive bidding process, the Commission will presume that the aid is proportionate and limited to the minimum necessary. In the absence of a competitive bidding process, the Commission will assess proportionality on a case-by-case basis.

#### *Avoidance of undue negative effects on competition and trade*

The Member State must identify and quantify the expected benefits of the measure, where possible in terms of subsidy per tonne of CO<sub>2</sub> equivalent emissions avoided. It is important to ensure that the measure is structured in a way that limits to the minimum any distortion of competition in the market.

If the aid is granted through a competitive bidding process open to all operators of coal, peat or oil shale on a non-discriminatory basis, the Commission will presume that the aid has limited distortive effects on competition and trade. In the absence of a competitive bidding process, the Commission will assess the aid's effects on competition and trade based on the design of the measure and its effect on the relevant market."

## Section 8 - Revision

According to paragraph 415 the Commission may decide to review or amend the CEEAG at any time if this should be necessary for reasons associated with competition policy or to take account of other EU policies and international commitments **or for any other justified reason.**

However, the previous Guidelines had clearly stated durations and more defined reasons for the possible review or amendment of the CEEAG. We believe that paragraph 415 leads to significant regulatory uncertainty for companies, that will have to undertake significant investments in the following decade to contribute to the adopted EU climate targets and recently presented Fit for 55 legislative package. Investment decisions need regulatory stability - we thus propose that, firstly, the new Guidelines are valid for a period of at least 10 years and secondly, that the wording of paragraph 415 is in line with the wording in paragraph 254 of the previous Guidelines.

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