

Veolia comments on the draft CEEAG

Draft Guidelines on State aid for climate, environmental protection and energy 2022

Veolia group is the global leader in optimized resource management. With about 180,000 employees worldwide, the Group designs and provides water, waste and energy management solutions that contribute to the sustainable development of communities and industries: Veolia helps to develop access to resources, to preserve available resources, and to replenish them through its three complementary business activities.

In 2020, the Veolia group supplied 95 million people with drinking water and 62 million people with wastewater service, treated 47 million metric tons of waste and produced nearly 43 million megawatt hours of energy. Veolia Environnement (listed on Paris Euronext: VIE) recorded consolidated revenue of €26 bn in 2020.

We welcome the opportunity to comment on the new draft of Climate Energy and Environment Guidelines for State Aid. **The revised CEEAG framework could indeed provide Member States with enough flexibility to design fit-for-purpose state aid measures, support sustainable investments by setting a level playing field among different clean technologies, and facilitate the introduction of new and innovative products and processes to the market.** In that sense, we agree with the May Joint statement on the inclusion of the Green Deal into the State aid framework endorsed by Germany, Sweden, The Netherlands, Latvia, Ireland and Luxembourg that *“The aim [of the revised guidelines] is therefore not to create a permanent fixture of higher aid levels, but rather to create a set of rules which enables Member states to address their different challenges with effective and specific measures while remaining limited in time and scope to the necessary transition”*¹.

Our general assessment of the document is rather positive: it provides clear structure, while the new categories of aid correspond to the main priorities of the Green Deal. These new rules are important to steer public support towards the energy sources and infrastructure we need to implement the new EU ambition stemming from the “Fit for 55 package”. We welcome in particular:

- The introduction of a specific aid category for support of District Heating networks and investments they require;
- A facilitated methodology to calculate aid intensities according to the funding gap approach and the possibility to arbitrate between funding gap and aid intensities approach;
- Calculation of energy savings in terms of primary energy;
- Inclusion of funding for hydrogen projects;
- Minimum references to the taxonomy regulation;
- Introduction of contracts for difference for certain categories of aid that are likely to be vital for development of technologies such as CCUS.

Below you’ll find concrete proposals on changes that could be introduced to the text to make it even more consistent with current investment priorities, consistent with the 2030 climate targets.

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Definitions

- We welcome **the introduction in section 2.4 (paragraphe 29) of the notion of district heating systems:** *‘district heating and cooling systems’, consisting of heat generation facilities (heating/cooling production plants), the heating/cooling storage and distribution network (both ‘primary’- or transmission- and ‘secondary’ network of pipelines to supply heat to consumers). Reference to district heating is to be interpreted as district heating and/or cooling systems, depending on whether the networks supply heat or cooling jointly or separately’.* This is definitely a step in the right direction (contrary to the approach taken in the annex I and II to the taxonomy Regulation (EU) 2020/852, where there is a clear distinction between generation capacities and networks). A more comprehensive definition of district heating will provide better visibility to project beneficiaries regarding the measures they can request support for;
- The proposed ‘smart readiness’ definition should be aligned with the definition introduced in the Directive (EU) 2018/844 to take into account the ability of the building to respond to the needs and dynamics of the grid;
- Regarding article 2, 18(35) and the definition of ‘energy infrastructure’ applying in particular to carbon dioxide (d) , we believe that ‘upstream pipeline network’ needs further clarification. If upstream pipelines are defined as gathering pipelines from sources to the main trunk line, then they need to be added;
- Also, in the same paragraph, the notion of “infrastructure used for transmission or distribution of heat/steam/cooling from multiple producers/users, based on use of zero/low carbon heat/steam or waste heat from industrial applications”(e) should be clarified in relation in particular to district heating systems;
- Regarding the use of waste heat potential, a clear definition should be added: After (62) **new ‘waste heat and cold’ means unavoidable heat or cold generated as by-product in industrial or power generation installations, or in the tertiary sector, which would be dissipated unused in air or water without access to a district heating or cooling system, where a cogeneration process has been used or will be used or where cogeneration is not feasible, as defined in RED article 2 paragraph (9) of Directive 2018/2001.**

General considerations on Compatibility Assessment

Facilitating access to operating aid

Paragraph 30

The existing EEAG framework provides the possibility for Member States to grant operating aid for existing biomass installations after depreciation (EEAG section 3.3.2.3). Market dynamics in several Member States justify the need of support for existing biopower and CHP plants. The lack of uniform carbon pricing across the entire economy, the persistence of fossil fuels subsidies, and low wholesale energy prices, marked by the phenomenon of negative prices, do not allow certain plants to be profitable despite their positive contribution to the sustainability objectives. Moreover, the necessity to purchase sustainable fuels increases the expenses of operating such plants, even if they may also provide additional environmental services and thus create an incentive effect (e.g. the valorisation of material that would otherwise have been disposed of, burned in the field, or energy systems balancing for CHP, etc.).

We recommend that existing, depreciated assets should still be eligible to receive aid provided that their operators can prove that without support such plants could be substituted by less environmentally friendly assets.

(30) In certain exceptional cases aid can have an incentive effect even for projects which started before the aid application. In particular, aid is considered to have an incentive effect in the following situations:(...)
c) operating aid granted to existing installations for environmentally friendly production where there is no 'start of works' because there is no significant new investment. In these cases, the incentive effect can be demonstrated by a change to operate the installation in an environmentally friendly way rather than an alternative cheaper mode that is less environmentally friendly **or based on the counterfactual analysis, that demonstrates that the lack of such aid would result in less environmentally friendly choices of operators.**

Paragraph 103

In paragraph 103, it is important to make more systematic the possibility of granting operating aid for certain low-carbon technologies, without requiring Member States to provide new proof of the improved environmental impact of these technologies.

(103) Aid for decarbonisation can take a variety of forms including up front grants and contracts for ongoing aid payments such as contracts for difference⁶¹. **The choice between A aid which covers costs mostly linked to operation and the one linked to rather than investment should only be left to the appreciation of Member States, depending on their specific needs and their energy mix.** ~~only be used where the Member State clearly demonstrates that this results in more environmentally friendly operating decisions.~~

The possibility for companies to benefit from OpEx support for certain technologies should also be included in other categories of aid, and thus inserted at the beginning of Section 4 of the draft Guidelines (not exclusively in Section 4.1.). This applies in particular to support for district heating networks (Section 4.10).

Clarifying the exact link with the EU taxonomy

Paragraph 69

Regarding the notion of “Do no significant harm principle”, article 3 of Regulation (EU) 2020/852 refers to the full set of technical screening criteria and this can be understood as if the full set of criteria from the Taxonomy applied to the attribution of grants stemming from CEEAG. The Taxonomy key focus is financial market participants or issuers in respect of financial products or corporate bonds that are labeled as environmentally sustainable and undertakings, which are subject to the obligation to publish a non-financial statement or a consolidated non-financial statement acc. to Art. 19a or Art. 29a of Directive 2013/34/EU. Therefore a differentiation should be clearly made between financial products (e.g. through InvestEU), which are already mentioned under section 3.2.1.2.2. of CEEAG, and rules governing the state aid, which should pertain to the same regime as those spelled out in the [Technical guidance on the application of “do no significant harm” under the Recovery and Resilience Facility Regulation](#), regarding the attribution of support measures.

Therefore, we would like to propose the following amendment:

(69) In that balancing exercise, the Commission will pay particular attention to Article 3 of Regulation (EU) 2020/852 of the European Parliament and of the Council, including the ‘do no significant harm’ principle, or other comparable methodologies. The aid should support activities that respect the climate and environmental standards and priorities of the Union and do no significant harm to the environmental objectives within the meaning of Article 17 of Regulation.
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Guaranteeing visibility and stability of aid measures

Paragraphs 80 and 414

Once state aid measures are defined and implemented in Member States, they should not be open for revision during their planned lifetime. Paragraph (414) would require Member States to revise their existing support mechanisms by 2023 at the latest in order to bring them into line with the new rules. This clearly contravenes the principles of non-retroactivity of the law and deprives aid beneficiaries of legal certainty. Furthermore, it is in contradiction with the current guidelines, which provide clear exemptions for existing aid measures.

Paragraph (414) should therefore be deleted:

414. The Commission proposes the following appropriate measures to Member States under Article 108, paragraph (1), of the Treaty: (a) Member States must amend, where necessary, their existing environmental protection and energy aid schemes in order to bring them into line with these guidelines no later than 31 December 2023.

In addition, paragraph 80 says that MS should ensure that aid remains necessary for the duration of schemes that run for more than one year by updating their analysis of relevant costs and revenues annually. It is unclear that in case the analysis of the aid deems it unnecessary, it would automatically result in cancelling a given aid measure. This paragraph requires further clarification.

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

General remarks

We welcome the intention to simplify current rules and allow for faster procedure for operators to obtain aid (by the deleting for instance, individual notification of aid for large projects). We also believe it is important that future rules leave at Member State discretion the possibility to deviate from the default approach, including from the format of competitive bidding process.

Cogeneration

The aid for cogeneration is now included in this category (out of previously one devoted to energy efficiency). This is a positive evolution as it underscores the potential of this solution for helping the EU reach its overall emissions goals. However, its main advantages in increasing energy efficiency as well as providing stability to the energy system should be better reflected in this section. Indeed, the wider benefits for CHP cannot be reduced to the use of renewable or low carbon fuel - as underlined in the section 3.2.

The CHP is also a technology producing significant positive externalities. In particular, CHP is key to increasing energy efficiency of district heating systems, and also contributes to their role in delivering balancing capabilities to the electrical grid (see paragraph 29).

It is paramount that future rules leave at Member State discretion the possibility to deviate from the format of competitive bidding process by developing dedicated schemes for specific options such as high efficiency Combined Heat and Power². Departing from the competitive bidding format for cogeneration should be linked to “high efficiency cogeneration “ requirements in the EED, rather than meeting the threshold in Article 5 of Regulation (EU) 2019/943, which is adapted to power-only generation and not to cogeneration (92).

Regarding paragraph 107, we welcome a systemic approach taken when supporting low carbon energy production. But it should also be taking into account the marginal energy mix displaced or utilised and ensuring that incentives are not provided for very polluting generation. For cogeneration, this is delivered by virtue of the merit order on the electricity side and through the production of highly efficient heat compared to heat only boilers. High efficiency cogeneration, both renewable and non-renewable, has higher marginal cost than intermittent renewable sources, and will generally be dispatched after these zero pollution electricity is dispatched. This is also ensured through the implementation of Article 13 of the Electricity Regulation, which requires that renewable electricity is curtailed last. Paragraph 107 therefore should not undermine existing provisions in the Electricity Regulation.

Also, in the past, cogeneration projects have been designed to maximise energy efficiency, sizing the system and optimising its operation to suit the heat customer needs (either for an

² The format of the competitive bidding process might not be always adapted for high efficiency CHP installations which supply two products simultaneously. This issue is documented in the case law - SA 42393 ‘Reform of support for cogeneration in Germany’, 2016.

industrial site, a district heating network or a building). As the energy system evolves, flexibilising cogeneration systems should be incentivised on top of the support offered for its environmental benefits. To operate more flexibly, CHP systems would need to be coupled with storage and electric boilers, as well as smart controls (see new paragraphe added after 107).

We suggest the following modifications:

(29) ‘District heating and cooling systems’, consisting of heat generation facilities (heating/cooling production plants, **including combined heat and power plants**), the heating/cooling storage and distribution network (both ‘primary’- or transmission- and ‘secondary’ network of pipelines to supply heat to consumers). Reference to district heating is to be interpreted as district heating and/or cooling systems, depending on whether the networks supply heat or cooling jointly or separately’.

(92) Exceptions from the requirement to allocate aid and determine the aid level through a competitive bidding process can be justified where evidence, including that gathered in the public consultation, is provided that one of the following applies:

- (a) there is insufficient potential supply to ensure competition; in that case, the Member State must demonstrate that it is not possible to increase competition by reducing the budget or expanding the eligibility of the scheme;
- (b) beneficiaries are small projects, defined as follows:
 - (i) for electricity generation or storage projects – projects below the threshold in Article 5 of Regulation (EU) 2019/943;
 - (ii) **for cogeneration projects that comply with the small scale cogeneration and micr-CHP definitions in the Energy Efficiency Directive 2012/27/EU**
 - (iii) for electricity consumption – projects with a maximum demand less than 400kW;
 - (iv) for heat generation and gas production technologies – projects below 400kW installed

(107) (the paragraph is deleted) and replaced by: To avoid undermining the objective of the measure or other Union environmental protection objectives, **incentives for electricity production and for end use electrification must take into account the carbon intensity of the marginal electricity displaced as well as the carbon intensity of the electricity that would need to be additionally produced to meet the increased electricity consumption, in the case of electrification, while ensuring that renewable electricity generation is curtailed last as per Article 13 of Regulation 2019/943 and that priority dispatch conditions in Article 12 of Regulation 2019/943 are respected. For example, electricity from non-renewable cogeneration supplied to the grid may not be supported if renewable electricity would need to be curtailed for significant periods of time, to be defined by the member state in advance.**

After 107 (new): Where cogeneration is supported, additional support should be allocated for the flexible operation of the cogeneration system to quickly ramp up generation at times of positive residual load (when electricity demand is higher than intermittent renewable energy sources) and ramp down generation at times of negative residual load.

Bioenergy

Paragraph 77

In order to avoid possible negative effects resulting from the production of biofuels, bioliquids and biomass from crops for food and feed the Commission defined biofuels associated with a high risk of indirect land use change (iLUC). According to Art. 26 (2) of EU 2018/2001

Directive, the eligibility for the support of this type of fuels will be phased out by December 31st, 2030 the latest (starting on January 1st, 2024). Therefore, the Commission delegated regulation (EU) 2019/807 specifies which biofuels can be associated with a high-risk of iLUC by providing certain thresholds. **All other biofuels have to be considered low-risk of iLUC. Thus, the expansion of biofuels below those thresholds should not be considered as producing negative effects that outweigh the positive ones.**

In addition, the requirement to avoid distortions on the commodity markets should be deleted, as market dynamics and events are too complex to be reduced to simple factors. Such a requirement bears the risks of oversimplified conclusions to the detriment of bioenergy and would therefore impact the establishment of support schemes, which are badly needed given the massive investments required in this area. In addition, already existing support mechanisms should not be jeopardised.

(77) (...) Indirect land-use change (ILUC) occurs when the cultivation of crops for biofuels, bioliquids and biomass fuels displaces production of crops for food and feed purposes, **specified in delegated act (EU) 2019/807**. Such additional demand increases the pressure on land and can lead to the extension of agricultural land into areas with high-carbon stock, such as forests, wetlands and peatland, **where no national legislation is in place or its enforcement is weak**, causing additional greenhouse gas emissions. This is why Directive (EU) 2018/2001 limits food and feed crops-based biofuels, bioliquids and biomass fuels **and regulation (EU) 2019/807 provides additional safeguards**. The Commission considers that certain aid measures can aggravate indirect negative externalities. The Commission will therefore, in principle, consider that support for biofuels, bioliquids, biogas and biomass fuels exceeding the caps defining their eligibility for the calculation of the gross final consumption of energy from renewable sources in the Member State concerned in accordance with Article 26 of that Directive, **and exceeding the respective thresholds established in regulation (EU) 2019/807** do not produce positive effects which outweigh the negative effects of the measure. ~~Furthermore, the Commission will verify whether Member States took into account in the design of their support mechanisms the need to avoid distortions on the raw material markets from biomass support, in particular for forest biomass.~~

Paragraph 96

The overcompensation assessment for biofuels specified in this paragraph is not envisaged for other subsidy categories, such as for instance in the case of e-mobility. Thus it puts biofuels at clear disadvantage.

In addition, the overcompensation calculation (which would have to be based on the assumptions of specific production costs or even a given company profits projections) would not be sufficiently court-proof and would prevent any planning certainty for investments and amortisation periods. This is due to tax rates that have to be adjusted annually - based on the past market data that fluctuate strongly over the course of the year. Hence, we believe that the overcompensation assessment should be removed.

(96) ~~When aid is granted in the form of operating aid or a tax reduction to support biofuels, bioliquids or biogas, and there is a quota or supply obligation which effectively sets a separate market price for biofuels, the aid amount must not exceed the difference between their production costs and that market price. Production costs may include a reasonable profit.~~

Paragraph 107

This paragraph establishes a quasi parallel between fossil fuels and biomass, which is problematic given the use of local sustainable biomass is playing a key role in the decarbonisation of the heat market in many countries. It also creates an artificial distinction between various forms of renewable energy (biomass vs other forms of renewable energy). The revised CEEAG should mirror the existing Renewable Energy Directive and be consistent concerning the definitions used. That means that the promotion of bioenergy should systematically refer to the sustainability and greenhouse gases emissions saving criteria, as referred to under paragraph 76. In this regard, any form of arbitrary differentiation among renewable technologies, for instance by introducing the term ‘zero air pollution renewable energy sources’ undermines the principle of the coherence of the EU law.

In addition the obligation to identify the curtailment of ‘zero air pollution renewable energy sources’ would provide an additional administrative burden on Transmission System Operators far beyond their role as they would need to assess the curtailment time of less polluting source, by more polluting source. In this regard’s rules on curtailment and redispatching are already provided by art 13. of the Electricity Market Regulation.

Finally, the inclusion of support for heat in this paragraph might end up discouraging Member States from promoting sustainable biomass in the most efficient applications such as district heating via the means of either investment or operating aid for renewable heat production. Whereas this paragraph has merits to deal with electricity, which is difficult to store and is traded on the internal EU market, in the case of heating where storage is possible, other point need to be considered such as security of supply as these systems are typically small and not interconnected. **Hence, this paragraph should be removed and replaced by already proposed text (see section on cogeneration).**

Other important points for this category

Paragraph 92

Paragraph 89 stipulates that the aid for reducing greenhouse gas emissions should in general be granted through a competitive bidding process as described in paragraphs 48 and 49. Yet, the category also includes the projects in the field of energy efficiency in the industry. For this type of projects, given their nature, the bidding process might be particularly ill-adapted. Therefore, we would advocate for the same approach as to the energy efficiency projects in section 4.2, that is maximum aid intensities. Requiring bidding processes for all State aid as foreseen in the CEEAG draft will, if poorly implemented, cause high transaction costs, and will lead to far fewer projects being implemented because of the additional complexity, uncertainty and delays involved. Traditional grant programmes that companies and energy advisors know well should not be abandoned as energy efficiency projects especially in industry follow a different and more individualized logic from simple, commoditized energy generation projects. Therefore we propose the following modification:

(92). Exceptions from the requirement to allocate aid and determine the aid level through a competitive bidding process can be justified where evidence, including that gathered in the public consultation, is provided that one of the following applies: (...)

new (c) beneficiaires implement energy efficiency projects in the industry, including cogeneration installations.

Paragraph 98

Crucial for the estimation of the subsidy per tonne of CO₂ equivalent emissions avoided for each beneficiary or reference project will be **the design of assessment methodology**, particularly the integration of the assessment of life cycle emissions created or reduced, of other renewable technologies, which currently do not comply with life cycle assessment (i.e. solar, wind, geothermal). For the establishment of the authoritative benchmark for costs of different technologies, an objective life-cycle emission assessment should be applied to all renewable energy technologies, including those reliant on imported components. For this reason, harmonization of the methodology might need to be introduced.

(98). The subsidy per tonne of CO₂ equivalent emissions avoided must be estimated for each beneficiary or reference project, and the assumptions and methodology for that calculation provided. To the extent possible, this should seek to identify the net emissions reduction from the activity, taking into account life-cycle emissions created or reduced, **applied to all renewable energy sources**. To enable a comparison between the costs of different environmental protection measures, the methodology should usually be similar for all measures promoted by a Member State.

Paragraph 105

We note that case-by-case assessments by the Commission should be carried out for dedicated infrastructure projects. This would be discriminatory compared to other projects that are not qualified as dedicated infrastructure. This would be all the more unjustified as projects defined as dedicated in CEEAG will play a key role in the decarbonisation process of the industrial sector and can at any time be turned into integrated cross-border projects. This provision should therefore be deleted.

~~105. The Commission will carry out a case-by-case assessment for measures that include dedicated infrastructure projects. In its assessment, the Commission will consider, inter alia, the size of the infrastructure in relation to the relevant market, the impact on the likelihood of additional market-based investments, the extent to which the infrastructure is initially intended for an individual user or group of users and whether a credible plan or firm commitment for connecting to a wider network exists, the duration of any derogations or exemptions from internal market legislation, the structure of the relevant market and the position of the beneficiaries in that market.~~

Paragraphs 74 and 110

Regarding energy efficiency investments in the industry, this paragraph refers to aid measures primarily aimed at “reducing greenhouse gas emissions (...) and aid for energy efficiency including high-efficiency cogeneration (...)”. While energy performance contracting is mentioned only in category 4.2, it is missing in this category. EnPCs are an efficient tool for guaranteeing long-term energy savings also in the industrial sector and should be eligible in this category too.

Also, as the operator cannot commit to whether and to what extent low carbon fuels (e.g. CH₄, methanol and H₂) will be available - the commitment of the operator should rather be demonstrated by investments into **climate-neutral ready facilities**. These investments should be enabled by a renewed framework fostering deployment of low carbon fuels. **This means an ambitious and predictable roadmap for gas decarbonisation, with clear targets at European Union (EU) level, with respect to the uptake of renewable and decarbonised**

gases and the greenhouse gas (GHG) intensity reduction for gas consumption. We also stress the importance of fostering the availability and affordability of green gases, while stimulating demand in all sectors. To support consumers in switching to renewable gases, support for their uptake and the necessary upgrade of infrastructure and equipment should also be considered. **Therefore, the 4.1 category should also include aid measures that support the switch from natural gas by creating the right conditions for the rapid deployment of low-carbon and renewable gases.**

(74) This Section lays down the compatibility rules for aid measures primarily aimed at reducing greenhouse gas emissions, including aid for the production of renewable and low carbon energy, aid for energy efficiency including high-efficiency cogeneration, **and energy performance contracting**, aid for carbon capture, storage and use, and aid for the reduction or avoidance of emissions resulting from industrial processes (....). **It also covers measures aimed at creating favorable conditions for the development of low-carbon and renewable gases that member states will have to put in place in order to ensure a possibility of a swift transition from natural gas-based infrastructures.**

(110) Similarly, measures that incentivise new investments in energy or industrial production based on natural gas may reduce greenhouse gas emissions and other pollutants in the short term but aggravate negative environmental externalities in the longer term, compared to alternative investments. For investments in natural gas to be seen as having positive environmental effects, Member States must explain how they will ensure that the investment contributes to achieving the Union's 2030 climate target and 2050 climate neutrality target. In particular, the Member States should explain how a lock in ~~of this gas-fired energy generation or gas-fired production equipment will be avoided~~ **in unabated natural gas fired energy generation will be avoided**. For example, this may include binding commitments by the beneficiary to implement decarbonisation technologies such as energy efficiency equipment like **cogeneration that is renewables ready**, CCS/CCU or substitute natural gas **by investing in facilities ready to use climate-neutral fuels when they are available** ~~by renewable or low carbon gas~~ or to close the plant on a timeline consistent with the Union's climate targets⁶⁴.

4.2 Aid for the improvement of the energy and environmental performance of buildings

Paragraph 116

We would like to suggest the following additions to the scope of this category:

116. This aid may be combined with aid for any or all of the following measures:

- (a) the installation of integrated on-site renewable energy installations generating electricity, heat or cold; **including micro-CHP**;
- (b) the installation of equipment for the storage of the energy generated by on-site renewable energy installations,
- (c) the construction and installation of recharging infrastructure for use by the building users, and related infrastructure, such as ducting, where the car park is located either inside the building or it is physically adjacent to the building;
- (d) the installation of equipment for the on-site digitalisation of the building, in particular to increase its smart readiness, **including smart substations and other digital solutions related to district energy, when efficient district heating is connected (and not covered under 4.10 category)**;
- Eligible investments may include interventions limited to passive in-house wiring or structured cabling for data networks and, if necessary, the ancillary part of the passive network on the private property outside the building. Wiring or cabling for data networks outside the private property is excluded;
- (e) other investments that improve the energy or environmental performance of the building, including investments **in improvement of indoor air quality**, in green roofs and equipment for the recovery of rain water;
- (d) **non-material investments (e.g. staff training, consumer behavior, deployment of new software, project costs).**

Paragraph (118)

The use of a staged renovation can be a very efficient manner to generate additional resources necessary to deploy more capital intensive investments (through the use of energy performance contracting in the initial stages of renovation). This option should not be restricted by any reference to a limited period of time.

(118. a) (...) in the case of renovation of existing buildings, energy performance improvements leading to a reduction in primary energy demand of at least 20 % as compared to the situation prior to the investment (...) where the improvement is part of a staged renovation, the latter must lead to an overall reduction in primary energy demand of at least 30 % as compared to the situation prior to the investment, ~~over a period of 3 years.~~

Paragraphs 119 and 128

The current approach discriminates between large undertakings and SMEs. The same aid intensities should apply to all undertakings with a view to attracting also large companies with a track record in the field of massive refurbishment of buildings. Aid intensity must take into account the level of savings, possibly the beneficiary of the aid, but not the nature of the

provider (the same goes for the paragraph 398 in the aid category 4.13 for “Aid for studies or consultancy services on environmental protection and energy matters”).

Therefore we would suggest an increase of aid intensity for undertakings subject to long-term guarantees for real, duly monitored and enforced energy savings as well as enhanced air quality such as those provided by comprehensive energy performance contracting schemes. This would mirror the possibility of having a higher aid intensity for projects involving eco-innovation in paragraph 213.

(119) Aid for the improvement of the energy performance of buildings may ~~also~~ be granted to ~~SMEs and small mid-caps that are~~ providers of energy performance improvement measures for the facilitation of energy performance contracting within the meaning of Article 2, paragraph (27) of Directive 2012/27/EU, **when investing on behalf of the building owner.**

(128). The aid intensity may be increased by 20 percentage points for ~~aid granted to small undertakings or by 10 percentage points for aid granted to medium-sized undertakings~~ **undertakings covered by energy performance contracts as well as measures helping to enhance indoor air quality.**

Paragraph 124

Measures available to ESCOs should not be restricted to a particular form of support as it is highly dependent on the nature of the project covered by an energy performance contracting.

(124) Aid for the facilitation of energy performance contracting may take the form of a loan or guarantee to the provider of the energy performance improvement measures under an energy performance contract, or consist in a financial product aimed to refinance the respective provider (for example, factoring or forfeiting), **and any other financial fiscal tool that can improve the fiscal balance of the project”.**

Paragraph 134

We welcome the clear provisions to avoid a lock-in into the direct use of fossil fuels contradicting the Green Deal objectives, when such equipment is not energy efficient, renewables and/or hydrogen ready. The use of individual heating solutions based on coal, oil and natural gas should in particular be assessed compared with the possibility of connecting to district heating systems nearby, when decarbonisation strategies exist and the system meets the definition of high efficient DHN (in line with paragraph 349).

(134). Measures that incentivise new investments in natural gas-fired equipment aimed at improving the energy efficiency of buildings may lead to a reduction in energy demand in the short run but aggravate negative environmental externalities in the longer run, compared to alternative investments. Moreover, aid for the installation of natural gas fired equipment, **which is not energy efficient, renewables-ready and/or hydrogen ready**, may unduly distort competition where it displaces investments into cleaner alternatives that are already available on the market, or where it locks in certain technologies, hampering the wider development of a market for and the use of cleaner technologies. The Commission considers that the positive effects of measures that create such a lock-in effect are unlikely to outweigh their negative effects. As part of its assessment, the Commission will consider whether natural gas-fired **individual** equipment replaces energy equipment using the most polluting fossil fuels, such as oil and coal, **or, in the case of on-site high efficiency**

cogeneration, the self-generated and self-consumed electricity displaces higher carbon marginal power generation, and whether the connection to high efficient district heating is a viable option given the existence of regional/national heating and cooling strategies.

4.4. Aid for resource efficiency and for supporting the transition towards a circular economy

The inclusion under section 4.4 of Aid for resource efficiency and for supporting the transition towards a circular economy in the CEEAG as a continuation of the section on Aid for resource efficiency and in particular aid to waste management is welcomed.

Necessity of ensuring similar conditions for state aid support for activities recycling waste or using recycled materials

Contrary to many other activities, waste management and recycling are a set of economic activities which encompass various recovery processes, most often carried out by different operators. In addition, in **the absence of harmonisation of end-of-waste criteria for most waste streams across the EU**, a number of recycled materials is considered as a waste in some countries and as a product in others. This is the case for plastics, paper, rubber or wood, for which no harmonised end-of-waste criteria exist.

Thus, it is absolutely essential to ensure that economic activities involving recycling waste or using recycled materials, whether classified as waste or as product, are subject to the same conditions in order to avoid distortions of competition and trade among Member States (which is one of the core objectives of the draft CEEAG).

Incineration with waste recovery should also be supported in the new guidelines

By producing low carbon energy, WtE (incineration with energy recovery) plants greatly reduce the overall GHG impact of the waste sector. Throughout the years, this technology has also helped the Member States that had decided to invest in WtE installations to reach their national emissions reduction targets, through decarbonisation of the electricity and heating systems, improving energy efficiency, and the use of local and renewable sources. WtE plants serve society, protect the environment and the climate by reducing the volume of waste, treating polluted substances in an environmentally sound way, and recovering climate-friendly energy and materials in the process.

Considering the new EU Green Deal targets, the CEEAG should continue to support WtE improvements in heat utilisation and energy efficiency through district heating and industrial steam projects, especially in Member States where an integrated waste management system has yet to be developed. Moreover, with bigger penetration of intermittent renewables in electricity production there is a need for balancing and storage options. WtE can also fulfill this purpose together with creating new synergies with upcoming technologies such as CCUS and Hydrogen production for low carbon transport. We welcome the opportunity to specifically support CCUS technologies in WtE plants, which have already started to be explored by the waste sector.

It is fundamental that CEEAG continue to cover energy and environment topics in a circular economy perspective. WtE plays a crucial role in the circular economy by treating residues from recycling processes and should remain eligible for aid in line with the EU waste hierarchy. Also, the support should be available to an entire sector or all undertakings facing the same environmental challenge (such as the waste management sector as a whole) to ensure a level playing field and minimise competition distortions.

4.8 Aid for the security of electricity supply

In the framework of the category of aid for the security of electricity supply, the role of cogeneration should be duly recognized and promoted:

- State aid should prioritise lowest carbon and highest efficiency dispatchable generation for system adequacy, including stable capacity and other services;
- In order to properly implement security of supply targeted measures, the local marginal energy mix should be taken into account³;
- The emissions performance standard (EPS) in the Electricity Regulation (EU) 2019/943 is a first step in excluding most polluting electricity generation from providing capacity services. Yet, references to the EPS in Regulation 2019/943 should not be applied to assess cogeneration emissions, because the “net electricity efficiency” methodology unfairly allocates all CHP emissions to electricity, while no emissions are allocated to cogenerated heat⁴. Instead, a fair allocation methodology for CHP electricity and heat emissions should be outlined. Alternatively, an EPS of 270 g of direct CO₂/kWh of total energy output (including electricity, heat and mechanical energy) would be more appropriate for CHP under the state aid guidelines;
- Self-consumption of electricity produced on site should be recognised as relevant form of demand response;
- High efficiency cogeneration fulfills the mission of power-only plants in terms of security of supply, while delivering higher efficiency, lower emissions and lower use of resources. CHP systems can flexibly meet power grid needs (either by ramping up and down to meet residual demand or by providing firm capacity), while also generating heat for immediate or later use. Moreover, new CHP technologies can avoid fossil fuel lock-in by being renewables-ready. Therefore, support for security of supply should comply both with ambitious energy efficiency and renewable-readiness criteria.

(299) In its assessment, the Commission will take account of the following elements to be provided by the Member State:

- a. an assessment of the impact of variable generation, including that originating from neighbouring systems;
- b. **(new) an assessment of the impact of end use electrification on seasonal, weekly and daily peak demand;**
- c. an assessment of the impact of demand-side participation **and distributed high efficiency cogeneration** including a description of measures to encourage demand side management;
- d. an assessment of the actual or potential existence of interconnectors and major transmission grid infrastructure, including a description of projects under construction and planned;
- e. an assessment of any other element which might cause or exacerbate the security of electricity supply problem, such as caps on wholesale prices or other regulatory or market failures. Where required under Regulation (EU) 2019/943, the implementation plan referred to in Article 20 (3)

³ The [FFE study](#) outlines the key principles to assess the emissions intensity of CHP produced electricity

⁴ Regulation (EU) 2019/943 requires the EPS to be based on net electrical efficiency, which is not adapted to CHP. The simplistic “net electrical efficiency” approach allocates all CHP emissions (electricity and heat) to electricity, as it only takes into account the CHP electrical efficiency (e.g. 35-60%) and assumes all fuel input is used to produce electricity. Instead, a proper methodology should split total emissions into electricity and heat emissions respectively.

of that Regulation must be subject to a Commission opinion before aid can be granted. The implementation plan and opinion will be taken into account in the necessity assessment.

(301) “Member States should primarily consider alternative ways of achieving security of electricity supply, in particular more efficient electricity market design that can alleviate the market failures that undermine security of electricity supply. For instance, improving the functioning of electricity imbalance settlement, better integrating variable generation, incentivising **high efficient cogeneration** and integrating demand response and storage, enabling efficient price signals, removing barriers to cross-border trade, and improving infrastructure including interconnection. Aid may be found appropriate for security of supply measures where, despite appropriate improvements to market design and investments in network assets, whether already implemented or planned, a security of supply concern remains”.

(318) Incentives must not be provided for generation of energy that would displace less polluting forms of energy, **taking into account the local electricity mix and the marginal displaced electricity**.

(320) Security of supply measures must meet any relevant design conditions in Article 22 of Regulation (EU) 2019/943. **For cogenerated electricity, the “high efficiency cogeneration” methodology in Directive 2012/27/EU and its subsequent revisions must be applied to assess and allocate emissions to heat and electricity.**

(324) To avoid undermining incentives for demand response, **including via self-production and self-consumption**, and exacerbating the market failures that lead to the need for security of supply measures, and to ensure the security of supply intervention is as limited in size as possible, the costs of a security of supply measure should be borne by the market participants who contribute to the need for the measure. For example, this may be achieved by allocating the costs of a security of supply measure to electricity consumers in periods of peak electricity demand.

(325) The Commission considers that certain aid measures have negative effects on competition and trade that are unlikely to be offset. In particular, certain aid measures may aggravate market failures, creating inefficiencies to the detriment of consumer and social welfare. For instance, measures – including network reserves and interruptibility schemes – that do not respect the emissions threshold applicable to capacity mechanisms set out in Article 22 of Regulation (EU) 2019/943 **or the high efficiency cogeneration standard in Directive 2012/27/EU** and that may incentivise new investments in energy based on the most polluting fossil fuels, such as coal, diesel, lignite, oil, peat and oil shale increase the negative environmental externalities in the market.

(326) Measures that incentivise new investments in energy generation based on natural gas may support security of electricity supply but aggravate negative environmental externalities in the longer term, compared to alternative investments in non-emitting technologies. To enable the Commission to verify that the negative effects of such measures can be offset by positive effects in the balancing test, Member States should explain how they will ensure that such investment contributes to achieving the Union’s 2030 climate target and 2050 climate neutrality target. In particular, the Member States should explain how **all gaseous fuels, and natural gas in particular, are utilised efficiently with priority in high efficiency cogeneration, as well as how** a lock-in of this gas-fired energy generation will be avoided. For example, this may include binding commitments by the beneficiary to implement decarbonisation technologies such as CCS/CCU, **high efficiency cogeneration** and/or substitute natural gas by renewable or low carbon gas or to close the plant on a timeline consistent with the Union’s climate targets.

4.9. Aid for energy infrastructure

Paragraph 330

In this category, we are happy to see that all types of infrastructure related to CCUS are supported. We would also like to see a more explicit reference to bioenergy carbon capture and storage as well as CCS from waste.

4.10 Aid for district heating and cooling

We welcome the approach on District Heating under 4.10 that will allow Member States to develop dynamic policies to transform the heating and cooling market, and support the implementation of relevant pieces of legislation. The draft rules are confirming the current approach by allowing aid for a) the development of new Efficient DHC, b) the upgrade of existing DHC and c) for non-Efficient networks to allow for their transition towards Efficient DHC status.

Easing of some conditions (in particular paragraph 344 that specifies that general sections 3.2.1.1. on Necessity of the aid, and 3.2.1.2 on Appropriateness do not apply to aid to district heating or cooling; the non-application of the claw-back mechanism, confirmation of the funding gap approach, as well as the introduction of the notion of district heating systems encompassing generation and networks) will make it easier for Member states to develop schemes adapted to national/local situations and fit the purpose of developing sustainable local solutions.

The forthcoming revision of the GBER should support this approach by extending the scope of aid that can be granted to projects without prior notification when the scheme is already in conformity with these Guidelines.

Yet, to address the broad scope of policy options to support the transformation of the heat market, the **text should clarify that operating aid for renewable heating will be part of the options available to member States to tackle the competitive gap between sustainable solutions and fossil fuels.** Our other main remarks include:

Paragraphs 341 and 342

Paragraph 341 should cover DHC, as the section defines the scope for aid for Efficient DHC as well as conditions for aid for non-efficient systems. **As under current Guidelines, future rules should make clear that aid can target the different pillars of a District Heating system independently. For instance, aid should be available for generation, thermal storage or the network itself.** We also suggest adding a reference to the definition of waste heat, as set out in Directive 2018/2001.

The extension to storage will support cross-sector integration, in particular the integration of renewable electricity in systems combining large-scale heat pumps with waste heat and high-efficiency CHP⁵. Additionally, this paragraph should refer to ‘customer facilities’ – and section 4.2 - so that the connection of a building to a network and the related technical installations

⁵ ‘The new State aid framework should uphold the opportunity to support high-efficient heat generation and CHP systems that have a positive impact in terms of CO₂ reductions in the field of generation district heat, also from renewable sources. Additionally, the State aid framework should also support combinations of such heat generation through renewable electricity using heat pumps, waste heat and power to heat installations.’ ([Statement](#) on ‘A State Aid Framework fit for the Green Deal’ dated 31 May 2012 signed by Germany, Sweden, The Netherlands, Latvia, Ireland and Luxembourg).

within the building that allow the DHC systems to perform optimally, and reduce energy consumption, are covered.

(341) This Section applies to support for the construction, ~~or~~ upgrade **or extension** of ~~energy efficient~~ district heating and cooling systems. Supported investments can concern heating or cooling generation ~~and~~, **thermal** storage plants or the distribution network or both.

(342) Such aid measures typically cover the construction or upgrade of the generation unit to use renewable energy, waste heat, **and/or** highly efficient cogeneration ~~or including~~ thermal storage solutions, **power-to-heat solutions** or the upgrade **and extension** of the distribution network to reduce losses and increase efficiency, including through smart and digital solutions. **Heating and cooling equipment within customer premises referred to under paragraph 117 can also be covered.**

Paragraph 343

The text should clarify that systems should fulfil the status of EDHC definition as set out in EED 2(41) – instead of referring to ‘energy efficiency standard’; the text should also refer to commitments made by operators – checked by national authorities (Member States). As the operator may not own generation assets systematically, a suitable policy framework should be put in place leading to the development of new heat sources aligned with 2030 and climate neutrality goals.

(343) Where a Member State ~~invests~~ **grants** aid for ~~in~~ the upgrade of a district heating and cooling system **which does not fulfill the definition of Efficient DHS, as defined in article 2 paragraph (41) of Directive 2012/27 on energy efficiency without meeting the standard of energy efficiency**, it needs **to require the commitment of the operator** to start the works to reach that ~~status standard~~ within three years following the upgrade works, **where appropriate**.

Paragraph 344

We agree with the reference to waste to energy and the conditioning of the aid on the respect of the waste hierarchy.

The text should clearly refer to the definition of waste heat as in Directive 2018/2001 and new definition 62.

(344) Sections 3.2.1.1. and 3.2.1.2. do not apply to aid to district heating or cooling. The Commission considers that State aid can contribute to addressing market failures by triggering the investment needed for the creation, **expansion and upgrade** of ~~energy~~ efficient district heating and cooling systems. In addition, State aid for ~~energy~~ efficient district heating and cooling systems using waste, ~~including waste heat~~, as input fuel can make a positive contribution to environmental protection, provided that they do not circumvent the waste hierarchy principle¹

Paragraph 347

Throughout Europe, district heating operators are in the process of phasing out most polluting fuels and modernizing the existing systems in line with national decisions to phase them out, as well as a result of increasing CO2 prices.

The changes we suggest are meant to provide a clarification for authorities that the operator can be supported in upgrading and expanding a network, even in cases where this could lead

to a temporary and short term increase of production based on the most polluting fuels (i.e. to cover potential technical sequences before new fuels are being phased in), provided such developments are part of and consistent with the overall decarbonisation commitment of the operator and related investment plans are in line with the 2030 climate target and the 2050 climate-neutrality objective.

(347) Section 3.2.2. does not apply to aid for district heating or cooling. The Commission considers that the upgrade or construction of district heating and cooling systems which rely on the most polluting fossil fuels such as coal, lignite, oil and diesel, have negative consequences on competition and trade which are unlikely to be offset unless the following cumulative conditions are fulfilled:

- a/ the support is limited to ~~the upgrade of~~ the distribution network;
- b/ the distribution network is or **will become** fit for the transport of heat or cooling generated from renewable energy sources, **waste heat or other climate-neutral sources**;
- c/ the investment does not result in increased generation of energy from the most polluting fossil fuels (for example, by connecting additional customers). **Any temporary increase in generation from the most polluting fuels must be part of and consistent with the overall decarbonisation commitment of the operator and related investment plan in line with the 2030 climate target and the 2050 climate-neutrality objective as referred to in (d);**
- d/there is a clear timeline involving firm commitments **from the beneficiary of the aid where appropriate** for transitioning away from the most polluting fossil fuels, compatible with the Union's 2030 climate target and the 2050 climate neutrality target.

Paragraph 348

As the operator cannot commit as to whether/to what extent climate-neutral fuels will be available⁶, the commitment of the operator should rather be demonstrated by investments into climate-neutral ready facilities. We prefer to refer to a wider category of 'climate-neutral fuels' – e.g. CH₄, methanol and H₂. These investments should take place in a renewed framework to facilitate the deployment of the energy sources needed to feed supported installations with relevant (climate-neutral) fuels. The same changes should apply to paragraph 110 as well as 326.

(348) As regards the construction or upgrade of district heating generation installations, measures that incentivise new investments in energy based on natural gas may reduce greenhouse gas emissions in the short run but aggravate negative environmental externalities in the longer run, compared to alternative investments. For those investments in natural gas to be seen as having positive environmental effects, Member States must explain how they will ensure that the investment contributes to achieving the Union's 2030 climate target and 2050 climate neutrality target and, in particular how a lock-in of **unabated natural gas-fired energy generation or unabated natural-gas-fired production equipment will be avoided, as well as how energy efficient cogeneration is prioritised to reduce the consumption of natural gas.**

For example, this may include binding commitments by/from the beneficiary to implement CCS/CCU or substitute natural gas (**provided a suitable framework for the deployment of renewable low carbon fuels in being set up at both EU and national levels**) and **by investing in facilities ready to use climate-neutral fuels when they are available**, or to close the plant on a timeline consistent with the Union's climate targets.

Paragraph 349

⁶ 'We encourage the Commission to consider making investments into 'H2' readiness of new installations eligible for additional support as this avoids sunk costs.' (Statement of Member States above-mentioned page 1)

Carrying out the case-by-case assessment on the local market to analyse the impact of attributed aid for DHS on competition with alternatives technologies may lead to a significant degree of uncertainty, and in particular discourage national authorities from granting aid for large-scale local heat decarbonisation projects.

To avoid such potential negative consequences on DHS (which are recognized to contribute to the achievement of the objectives on smart sector integration), we suggest that aid for DHC systems is automatically considered as compatible when it is framed in an overall national/regional strategy to decarbonize the heating and cooling market, and when the system fulfils the definition of the Efficient DHC.

Combined with a renewed approach under GBER, such an approach would have the benefit of speeding up the process of approvals , and would remain in line with the generally favourable approach on aid for DHC throughout the draft - while also ensuring full coherence with EU and national climate and competition objectives.

(349) In analysing the impact of State aid for district heating and cooling systems on competition and in balancing it against the supported economic activity, the Commission will carry out a case-by-case assessment balancing the benefits of the project in terms of energy efficiency and sustainability against the negative effects on competition and in particular the possible negative impact on alternative technologies or providers of heating and cooling services and networks, **taking into account regional/national strategies for the decarbonization of heating and cooling (including comprehensive assessments under Directive on energy efficiency 2012/27), security of supply issues and other relevant aspects. Where the district heating system fulfils the definition of Efficient DHC according to Directive 2012/27, the Commission will typically assume that negative effects on competition are outweighed by positive environmental effects.**

4.11 Aid in the form of reductions from electricity levies for energy-intensive users

Call for including the recovery of sorted materials in this category

Mechanical recycling contributes to significant resource, GHG and energy savings, as demonstrated by multiple LCAs. While 4.11 deals with aids in the form of reductions for energy-intensive users, **recovery of sorted materials (NACE Code 38.32) is included in the current Guidelines on State aid for environmental protection and energy 2014-2020** precisely “*because they are economically similar to listed sectors and produce substitutable products (...) (recovery of sorted materials on account of substitutability with primary products included in the list)*”.

The substitution rationale, largely documented by GHG savings resulting from material recovery, is used in the technical screening criteria (TSC) for substantial contribution to climate mitigation for “material recovery of non-hazardous waste” in the [first delegated act on sustainable activities for climate mitigation](#).

Excluding recovery of sorted materials which encompasses, as described in the NACE Classification, the widest set of recovery to turn waste into secondary materials that substitute virgin materials into production processes, runs against the very objectives of transitioning towards a circular economy. It will also give an edge to economic activities which may meet the other conditions set in the draft CEEAG Section 4.11 without being the most circular and environmentally-friendly ones. Therefore, we recommend including recovery of sorted materials in the scope of this category.

Activity of manufacture of plastics should also include the manufacturing of plastics from recyclates

Plastics recycling plays a key role in transitioning towards a more circular economy. As illustrated in the [Plastics Strategy](#), “Around 25.8 million tonnes of plastic waste are generated in Europe every year. Less than 30% of such waste is collected for recycling. Of this amount, a significant share leaves the EU to be treated in third countries, where different environmental standards may apply.”

In the draft CEEAG, Annex I lists sectors eligible for aid in the form of reductions from electricity levies for energy-intensive activities. Yet, it only lists Manufacture of plastics in primary form (NACE CODE 20.16), expressly excluding the manufacturing of plastics from mechanical recycling - excluding the most circular and climate-efficient option to manufacture plastic.

The [first delegated act on sustainable activities for climate mitigation](#), based on the [Taxonomy report: Technical Annex](#) of the Technical Expert Group (TEG), defined TSC for substantial contribution to climate mitigation for the Manufacture of plastics in primary form (NACE CODE 20.16) as “the plastic in primary form is fully manufactured by mechanical recycling of plastic waste”.

The European Commission should both be consistent with the work carried out in drawing delegated acts to implement the Taxonomy Regulation – based on the work done by the TEG and currently the Platform on Sustainable Finance – and strive to support sectors which are vital to the transition to a more circular economy. Hence, it should

expressly include the manufacturing of plastics in primary form by the mechanical recycling of plastic waste among the supported sectors covered by section 4.11.