

Reply of the Czech Gas Association to the public consultation of the European Commission on the revised guidelines on the State aid for climate, environmental protection and energy 2022

The Czech Gas Association (hereinafter CGA) is an independent association of companies and experts operating in the gas and related industries. It brings together organizations active in the gas industry, along with research and scientific institutes, and further comprises experts whose specialization corresponds to the focus of the CGA.

CGA welcomes the possibility to comment on the proposed draft Climate, Energy and Environmental State aid Guidelines (CEEAG) and would like to express its opinions on the revision of the guidelines.

Weighing the positive effects of the aid against the negative effects on competition and trade

CGA strongly disagrees with linking balancing exercise under CEEAG regime to Regulation (EU) 2020/852¹ (EU Taxonomy). The EU taxonomy is targeting private investments, therefore, CGA does not see technical screening criteria developed within Taxonomy Regulation framework as fit for purpose for conducting balancing exercise in case of the State aid regime. State aid is defined as *“an advantage given by a government that may provide a company with an unfair competitive edge over its commercial rivals. Such State aid can be delivered in a variety of ways, such as through the allocation of grant subsidies, the provision of interest and tax relief, or the purchasing of goods and services on preferential terms.”*² **Thus, State aid concerns state-owned resources and not private investment** and as Valdis Dombrovskis, Executive Vice-President for an Economy that Works for People, said: *“Europe was an early leader in reforming the financial system to support investments for climate change. Today, we are taking a leap forward with the first-ever climate taxonomy which will help companies and investors to know whether their investments and activities are really green. This will be essential if we are to mobilise private investment in sustainable activities and make Europe climate-neutral by 2050.”*³

¹ Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088

² https://ec.europa.eu/regional_policy/en/policy/what/glossary/s/state-aid

³ https://ec.europa.eu/commission/presscorner/detail/en/ip_21_1804

In light of the abovementioned, EU Member States (MSs) should be free to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply in line with the Art. 194 of the TFEU⁴. This should be done in **cost-effective manner as outlined in the introduction of the CEEAG and holistic approach** should be streamlined. **European Commission should choose methodology for balancing exercise in a transparent and unbiased manner.**

CGA would also like to highlight that medium-term and long-term climate targets enshrined under the European Climate Law are Union-wide. Regulation (EU) 2018/842⁵ (Effort Sharing Regulation) recognizes **common but differentiated responsibilities** in terms of greenhouse gases (GHG) reductions of the EU MSs. **Thus, state aid for certain (transitory) activities using fossil fuels that provide an immediate reduction of GHG emissions, should be evaluated in accordance with EU MSs CO₂ budgets or cumulative annual emission allocations stretching towards 2050. Such an approach would take into account geographical and climatic conditions, economic possibilities of the MSs and expected future development of individual technologies in technology neutral manner.**

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

Avoidance of undue negative effects on competition and trade and balancing

We consider footnote 64 as an important element in clarifying what investments would be eligible for aid in case of natural gas-based energy generation or industrial production. Footnote 64 states: *“In addition, where a project involves investment in a natural gas-based energy generation or industrial production installation the costs of this installation would not generally be eligible for State aid under this section, since this would usually be considered the counterfactual investment that would take place in the absence of aid. Rather, the additional elements that deliver emissions reductions, such as CCS or extra costs associated with cogeneration, would be eligible for aid.”* Therefore, CGA proposes to **copy the footnote into paragraph 110 or create additional paragraph for the footnote.**

Public consultation

CGA argues for amendment of paragraph (86) in a following way:

⁴ <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12008E194:EN:HTML>

⁵ Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013

“No public consultation is required for measures falling under point 85(b) where competitive bidding processes are used ~~and the measure does not support investments fossil-fuel based energy generation or industrial production.~~”

Rationale behind the proposal for the amendment of the paragraph (86) is that a paragraph (110) already stipulates that **“Member States must explain how they will ensure that the investment [in energy or industrial production based on natural gas] 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.”** Therefore, CGA does not see why this **extra administrative burden (resulting in unreasonable administrative costs)** should be put in place for gas-fired energy generation or gas-fired production equipment (as State aid for most polluting fossil fuels such as coal, diesel, lignite, oil, peat and oil shale have negative effects on competition and trade that is unlikely to be offset) under paragraph 85(b).

Proportionality

In line with the main building block of the revision of the EEAG outlined in *Explanatory note accompanying the proposal for the revision of the Guidelines on State aid for environmental protection and energy 2014-2020*, which states: **“an enlargement of the scope of the Guidelines to new areas (e.g. clean mobility, biodiversity) and all technologies that can deliver the Green Deal, allowing higher aid amounts (100% of the funding gap) and new aid instruments (e.g. Carbon Contracts for Difference)”**, CGA argues that **when aid is granted in the form of investment aid for production of renewable and low carbon gases, then it may cover 100% of the funding gap.**

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

Rationale for the aid

*Paragraph 114. Measures aimed at improving the energy and environmental performance of buildings target negative externalities by creating individual incentives to attain targets for energy savings and for the reduction of greenhouse gas and air pollutant emissions. **In addition to the general market failures identified in Chapter 3, specific market failures may arise in the field of energy and environmental performance in buildings.***

CGA agrees with the statement that specific market failures may arise in the field of energy and environmental performance in buildings. **That’s why CGA argues for taking into account negative externalities associated with certain technologies, which improve energy and environmental performance of buildings.** Thus, European Commission should

explicitly, in CEEAG, **allow Member States to assess negative externalities associated with impacts of peak power demand on grid stability when assessing if investments qualify for State aid.**

Scope and supported activities

118. The aid must induce:

*(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. By way of derogation, 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 10 years** (...)*

Given the complexity of the task, 3 years for staged renovation is not an adequate timeframe and would be a burden for homeowners who do not have the necessary financial means to renovate in one go. Building on this, 10-15 years would be a more realistic timeframe.

Aid for clean mobility

General remarks

State aid guidelines should pay a closer attention at supporting both the production of biomethane, and its actual consumption in road transport. The focus should not be put on the drivetrain technology (ICE vs EVs, since these technologies are complementary), but rather on the type of fuel or energy used to power vehicles. The fuel dimension is what needs be primarily taken into account to assess the real environmental impact of the vehicles, and to accelerate transport decarbonization. For these reasons, and in order to be coherent, the guidelines should not only allow aid for producing biogas (point 76), but also fully support its actual distribution in refuelling stations and its consumption in CNG/LNG vehicles.

Proportionality

Technology neutrality should be overarching principle in all of the EU legislation. Therefore, CGA argues for technology neutrality principle to be also applied in the Section 4.3 Aid for clean mobility, especially when it comes to paragraph 157. While CGA acknowledges that zero-emission vehicles (Electric Vehicles) are key solution to decarbonization of the transport sector in the long-run (when most of the power in the grid will come from renewable energy sources), but meanwhile CGA argues for the same treatment of zero-emission vehicles and other clean transport vehicles as it is not the case currently.

Avoidance of undue negative effects on competition and trade and balancing

CGA argues for additional category of fuels used for blending in paragraph 162.

*“162. Aid for the acquisition or leasing of CNG and LNG vehicles may be regarded as not creating long-term lock-in effects and not displacing investments into cleaner technologies if, at the moment when the Member State notifies the Commission of its plans to implement the aid measure or when the aid measure is implemented, the Member State demonstrates that cleaner alternatives are not readily available on the market and are not expected to be available in the short term. The aid may also be regarded as not having lock-in effects or displacing investments into cleaner technologies where the Member State commits to ensure that those vehicles would be operated using blending of biogas or renewable gaseous transport fuels of nonbiological origin and **low carbon gaseous transport fuels (CCS/CCU is used in production of such fuels or such fuels are produced via methane pyrolysis)** (minimum 20%).”*

“164. When assessing the distortion of competition of aid for the acquisition of clean transport vehicles, the Commission will consider whether bringing into service new transport vehicles would result in or aggravate existing market failures, such as overcapacity in the sector concerned.”

Paragraph 164 further reinforces CGA concern regarding technology neutrality principle in the Section 4.3 Aid for clean mobility. Therefore, CGA asks for deleting the aforementioned paragraph from the CEEAG.

CNG and LNG vehicles are a mature technology, which yet represents a comparably small share of the European fleet. Contrary to what is stated by the European Commission in its communication (point 161 and 184), aid for the acquisition of CNG and LNG vehicles and deployment of associated refueling infrastructure would therefore not result in a distortion of the competition within the internal market. **What would rather unduly distort competition is restricting aid to only a limited set of options or preferential treatment of the so-called „zero emission“ solutions over clean transport vehicles.** This seems to be the case especially for the category of Heavy-duty vehicles (HDV) and its restricted definition as provided in the section 4.2 Definitions, point (20). Here, the definition of clean transport vehicle for categories M3, N2 and N3 refers as of 1 January 2026 to the definition provided by the Article 4, point (5) of Directive 2019/1161 (i.e., the revised Clean Vehicle Directive, only ‘CVD’ further) on ‘zero-emission heavy duty vehicle’⁶. Nevertheless, the commitments of the Member States resulting from the legally binding targets as adopted in this revised Directive with two phases until 2030 enable the Member States to meet the requirements on mandatory share of clean vehicle in the public procurements in the HDV category with all vehicles using alternative fuels as defined in points (1) and (2) of Article 2 of Directive 2014/94/EU (i.e. any bus and

⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019L1161&from=CS>

trucks running on hydrogen, battery electric (including plug-in hybrids), natural gas (both CNG and LNG, including biomethane), liquid biofuels, synthetic and paraffinic fuels, LPG)⁷. **On the contrary, the definition of the clean vehicle for this category as stipulated in these revised CEEAG (see Point 20 above) restricts the definition in the category of M3, N2 and N3 as of 1 January 2026 only for „zero-emission heavy duty vehicle“, while the revised CVD (2019/1161) define a zero-emission heavy duty vehicle only as a „sub-category“ of clean heavy duty vehicle with the whole scope of alternative fuels as mentioned above. In our opinion, this is unjustified narrowing of the scope which will further complicate fulfillment of Member States' obligations in public procurements of clean transport vehicles.** We would, therefore, request to reconsider such an approach in the definitions in HDV category line with the valid commitments and scope of CVD. Furthermore, the state aids should instead State aids should instead guarantee a level-playing field among all existing solutions to decarbonize transport, including CNG and LNG vehicles and associated refueling infrastructure. This would contribute to diversify clean mobility options for consumers and end-users, and result in faster decarbonization of the road transport sector in a cost-effective way.

CGA welcomes and fully support that (paragraph 156): “Environmental criteria used in the competitive bidding process may also include life-cycle considerations such as the environmental impact of the end-of-life management of the product.”

Aid for energy infrastructure

Limiting *Section 4.9 Aid for energy infrastructure* to Projects of Common Interest (PCIs) does not reflect *EU Hydrogen Strategy*⁸, which states: “**However, deploying hydrogen in Europe faces important challenges that neither the private sector nor Member States can address alone. Driving hydrogen development past the tipping point needs critical mass in investment, an enabling regulatory framework, new lead markets, sustained research and innovation into breakthrough technologies and for bringing new solutions to the market, a large-scale infrastructure network that only the EU and the single market can offer, and cooperation with our third country partners. All actors, public and private, at European national and regional level, must work together, across the entire value chain, to build a dynamic hydrogen ecosystem in Europe.** “

CGA argues for explicit recognition, in the *Section 4.9*, of missing market⁹ in relation to hydrogen and CO₂ infrastructure¹⁰ as both are crucial for hydrogen market

⁷ https://ec.europa.eu/transport/themes/urban/clean-vehicles-directive_en

⁸ https://ec.europa.eu/energy/sites/ener/files/hydrogen_strategy.pdf

⁹ A significant market failure is the failure to produce some goods and services, despite being needed or wanted. Markets can only form under certain conditions, and when these conditions are absent markets may struggle to exist. https://www.economicsonline.co.uk/Market_failures/Missing_markets.html

¹⁰ EU Hydrogen Strategy addresses indirectly also CO₂-related infrastructure (network) when it states that „*infrastructure for carbon capture and use of CO₂ will be required to facilitate certain forms of low-carbon hydrogen.* “

development. The low carbon gases market will not develop without government support, for example subsidies for production and use of low carbon gases including hydrogen, or **financial guarantees for hydrogen network development in the early years before there is an established user-pays base. Guidelines on the State aid for environmental protection and energy 2014-2020 (EEAG) recognize this problem in paragraph (206):** “*The Commission considers that for Projects of Common Interest as defined in Regulation (EC) No 347/2013, for smart grids, and for infrastructure investments in assisted areas, the market failures in terms of positive externalities and coordination problems are such that **financing by means of tariffs may not be sufficient and State aid may be granted.***” While CEEAG recognize it in slightly different manner in paragraph (337), CGA is of opinion that EEAG wording in paragraph (206) is more appropriate, especially in relation to hydrogen market and infrastructure.

Issue related to hydrogen market outlined above is considered also by the European Commission, in its public consultation on Hydrogen & Gas Decarbonization Package, European Commission takes into account of the aforementioned issue in the question number 44:

*„Today’s rules for gas network tariffs (see Art. 13 of the Gas Directive) seek to avoid cross-subsidies between network users but also to provide incentives for investments. **In an emerging hydrogen market, the transported hydrogen volumes as well as the customer base might be low initially. This could lead in certain cases to high initial hydrogen network tariffs for early users of a hydrogen network.** Please indicate the appropriateness of the statements below in case incumbent methane gas network operators should be allowed to retrofit their assets for hydrogen transport.“*

In line with the statement in the introduction section of the CEEAG: “*The Commission has estimated that achieving the newly increased 2030 climate, energy and transport targets will require EUR 350 billion of additional annual investment compared to the levels in 2011-2020, with further EUR 130 billion a year for the other environmental objectives estimated earlier. **The magnitude of this investment challenge requires mobilising both the private sector and public funds in a cost-effective manner.***” Repurposing of methane gas networks represents cost-effective way of developing hydrogen infrastructure. ACER and CEER also acknowledge in their White Paper *When and How to Regulate Hydrogen Networks?*¹¹ the benefits of repurposing of gas assets for hydrogen transport.

Support for **smart gas grids** in line with the definition of smart gas grid as defined in paragraph 18, (35), (v) should be added to the *Section 4.9* in the similar manner as in the Guidelines on State aid for environmental protection and energy 2014-2020 paragraph (206). **Smart gas grids, which enable and facilitate the integration of renewable and low-carbon gases into the network will play a key role in a decarbonization of gas and customer**

¹¹https://documents.acer.europa.eu/Official_documents/Position_Papers/Position%20papers/ACER_CEER_WhitePaper_on_the_regulation_of_hydrogen_networks_2020-02-09_FINAL.pdf

empowerment. Market failure associated with smart gas grids is that of information failure (e.g., difficulty in estimating costs and benefits or lack of awareness, positive externality).

Moreover, CEEAG states:

333. Similarly, the Commission considers that there is no State aid involved in investments where the energy infrastructure is run under a 'natural monopoly', which is deemed to exist where the following cumulative conditions are met:

(c) the infrastructure is not designed to selectively favour a specific undertaking or sector but provides benefits for society at large, which is normally the case for gas and electricity infrastructure.

Paragraph 333(c) should also include reference to hydrogen and CO₂ infrastructure in a manner consistent with paragraph 35 of the CEEAG.

Aid for district heating or cooling

“346. 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.”

CGA would like to clarify that reference to sustainability in paragraph 349 takes into account also social dimension of the sustainability. That's because the supply of heat from the district heating systems in the Czech Republic covers app. 50% of the total heat consumption. Approximately 1.6 million households in the Czech Republic are connected to the district heating systems, which corresponds to app. 4 million inhabitants of the Czech Republic.