

Targeted Consultation for the Evaluation of the Guidelines on State aid for Environmental protection and Energy 2014-2020 (EEAG)

Effectiveness:

In this section, we would like your opinion on the extent to which the State aid Guidelines for environmental protection and energy (EEAG) and the provisions applicable to aid for environmental protection (which include provisions on energy) (Section 7) of the General Block Exemption Regulation (related GBER provisions) have achieved their objectives and delivered results.

1. **Based on your experience, to what extent have the EEAG and the corresponding GBER provisions (e.g. tendering, technological neutrality, market integration) been effective in:**

Please explain: *5000 character(s) maximum*

The current 2014-2020 Guidelines on State aid for Environmental protection and Energy (2014-2020 EEAG) aim to achieve environmental and energy objectives and simultaneously ensure competitiveness and affordability for the benefit of industrial and household consumers. To achieve this, they proposed that energy cost increases must be contained, price signals for investments in electricity must spring up and the internal energy market must function well without barriers.

Moreover, with the new Clean Energy Package (CEP), the EU recognized the pivotal role of the power sector, in which renewable electricity penetration levels are now expected to reach over 55% by 2030. The CEP establishes a new set of rules governing the electricity market and renewables, helping make the electricity system more flexible so that it can accommodate rising levels of variable electricity production (wind and solar power), and the new sources of flexibility such as demand response, electric vehicles, storage, modernization and digitalization of the grids that will have to be developed in order to ensure a secure and reliable operation of the system.

In this new context, the current environmental and energy State aid guidelines fitness check and revision will assume even greater importance since State aid decisions are a powerful tool for an energy transition that relies on market forces to achieve its objectives; the aims to trigger new investments, accelerate technology innovation and achieve significant costs reductions of the clean European energy transition also of the transport and building sectors should be kept under consideration in the current evaluation and revision.

In general, realizing the profound impact that public subsidies have had on energy markets and consumers prices, we welcomed the adoption of 2014-2020 EEAG Guidelines, since they have guaranteed a higher level of transparency about EU support schemes and more careful scrutiny of competition and market distortions, cost effectiveness and security of supply.

- **Renewable energies:**

We think that public support should be designed to achieve decarbonization objectives and reflect falling production costs, until subsidies become unnecessary. However, it should also consider that, even where RES are competitive with other sources, they still require for long-term revenue

stabilization mechanisms to hedge the risks to which they are exposed. In fact, the growing penetration of variable renewable energy sources in the energy mix is shifting the cost structure of supply toward fixed costs. This in turn, under a short run marginal cost pricing model as it is for wholesale energy markets, is increasing the volatility of prices and hence the risks for investors. Moreover, variable RES are further exposed to the so-called cannibalization effect, i.e. a high production from these resources depresses market prices and thus their own revenues; a further implication to this effect is that even if these resources reach “grid parity”, it is difficult to obtain the required level of investment in these technologies merely based on short-term markets. To achieve an efficient decarbonization, risk hedging solutions in the form of long-term contracts shall be made available to market participants. Renewables can and should be subject to the wholesale energy market reality and dynamics. Such a shift would contribute to the wider objective of an integrated internal energy market in the EU. This must be squared with the need to provide the right market signals to possibly supported RES generation. Auctions granting the right support are a market compatible and efficient instrument. The right support does not distort RES behavior. FiT and FiP are not the right support kind, as they induce inefficient operation, being negative prices just a symptom.

In the past few years, auctions have become more and more common, often being the preferred policy and industry option to advance renewable energy deployment. Public support should be designed to achieve these objectives and reflect falling production costs, until subsidies eventually become unnecessary.

We consider that auction scheme can achieve deployment in a cost-efficient way due to their ability to discover the real price of the product being auctioned by means of a structured, transparent and most importantly, competitive process.

In the implementation of such an energy policy instrument, it is important to avoid “stop-and-go” effect that creates the risk of discontinuous business development and investment uncertainty.

Moreover, running effective auctions requires good planning, procurement and contracting capacity, otherwise it can involve significant transaction costs. In this sense, we believe that the support measures based on competitive bidding mechanisms are necessary to guarantee the achievement of the ambitious targets set for 2030.

Recommendations:

- We are in favor of support mechanisms based on the principle of technological-neutrality, especially for mature technologies that have similar costs.
- In any case, auctions should not impose excessive administrative burdens on investors. A long-term sensible calendar for technologically neutral auctions should be set in order to avoid stop-and-go behavior. In short, effective auctions require good planning, procurement and contracting capacity, and can involve significant transaction costs.
- Future CHP must be both efficient and consistent with the energy transition goals. As a consequence, support schemes that isolate CHP from market signals must be avoided. In particular, support schemes that induce CHP operation when low carbon or low variable cost generation is curtailed must be

avoided. On the other hand, gas-fired CHP support must be phased out. Instead policy support should be focused in renewable CHP.

- Any retroactive measures harm the legal certainty and stability of the incentive scheme, especially those notified and approved by the EC.

Resources Adequacy and Capacity mechanisms

With the increasing share of renewables in the energy mix, electricity generation in many Member States is shifting from a system of centralized, conventional and dispatchable power plants supply towards a system characterized by numerous, decentralized and small-scale distributed energy resources.

Some Member States have adopted or are considering introducing measures to ensure generation adequacy, typically by granting generators and demand response suppliers support for investment in existing and new resources.

The shift presents new challenges for security of supply and the 2014-2020 EEAG Guidelines take the view that this type of support amounts to State aid and set out the conditions that such capacity remuneration mechanisms must meet to be deemed as compatible support.

This approach has allowed greater transparency in the solutions implemented, but has automatically excluded that market-based CRMs exist and should be considered as an element of a new market design and not simply as a form of public support.

Capacity Remuneration Mechanisms should be designed to allow the participation at favourable conditions of innovative resources, such as Demand side response (DSR) and storage. We see capacity markets as being good opportunities for DSR, especially if the behaviour of aggregators is taken into account when assessing the design of the capacity market.

We think that if DSR can compete head-to-head with new-build generators in a capacity market's main auctions, on a level playing field, it will lead fewer new peaking plants being built and lower clearing prices. In State aid terms, this minimises the total amount of aid. Moreover, Member States should define quantitative targets for DSR development, as suggested by the Clean Energy Package.

Finally, we believe that consistency between the new CEP provisions, in particular with the Electricity Directive and Electricity Regulation, and the State aid Guidelines is crucial to guarantee that principles such as equal-treatment and technology neutrality of all resources will govern mechanisms and guide the revision of the Guidelines.

Recommendations:

A well designed capacity mechanism is characterized by a high degree of complexity that should be reflected in the revised EEAG Guidelines resources capacity provisions to work well; especially, there are improvements in the processes and product design that should now be made, given what has been learned from the 5 years of practical operation of the capacity mechanism, and the participation of innovative resources should be guaranteed.

In addition, new technologies such as batteries are likely to provide significant amounts of firm power, along other products. Fair competition with other generation, demand and storage technologies must be ensured.

2. Based on your experience, have Member States created a level playing field for imported and domestically produced biofuels and/or biomass energy when providing support (for instance by supporting a specific type of domestically produced biofuels and/or biomass energy, but not other types of biofuels and/or biomass energy with similar costs or greenhouse gases emissions)?

Please explain: *1000 character(s) maximum*

3. Based on your experience, to what extent has the GBER ensured public support for waste recycling while limiting the amount of aid to the minimum and limiting distortions of competition to the minimum?

Please explain: *1000 character(s) maximum*

The GBER and EEAG Guidelines should take into account the future development of waste directive and battery directive and potential change of classification of batteries after the first life. It is under discussion how to consider these batteries before they reach their second life (re-purpose): if like a waste (as today) or not. In the latter case due the positive effect from environmental point of view and the incipient phase of the market for such application a public support shall be foreseen by the revised State aid Guideline.

4. Based on your experience, to what extent has Article 39 GBER allowed aid through financial instruments for energy efficiency measures in buildings while limiting distortions of competition at the level of the financial intermediary and the funds involved?

Please explain: *1000 character(s) maximum*

5. Based on your experience, has State aid granted under the EEAG or the GBER generally achieved the relevant climate and environmental protection objectives while maintaining a competitive internal market?

Please explain: *1000 character(s) maximum*

Any EC State aid decision relating to environment and/or energy not only has an impact on competition, but also on the implementation of the all policies that are driving the energy transition. The current 2014-2020 EEAG Guidelines became a true instrument for the implementation of the EU's climate and energy goals and the new guidelines, together with the revised GBER provisions in the energy and environment fields will be paramount in reaching the goals that the European Institutions set in the Clean Energy Package (CEP).

The SA Decisions have to incorporate the efficiency first principle; to be in line with the CEP, ensure that capacity mechanisms are designed in such a way that priority has to be given to environmental friendly solutions and open to all flexible and innovative technologies.

Furthermore, the State aid process needs to become more transparent, non-discriminatory and when the support instrument are based on competitive process more quick and streamlined in the approval. At the same time the old guidelines and GBER did not take into consideration some market evolution, which were not yet developed at the time of their approval such as the Electric vehicle development with all its positive impact in the decarbonisation path.

The new guidelines and the revised GBER should take into consideration those evolution and new markets and provide more instances for stakeholders to contribute: companies are well placed to provide information on the long-term potential of different generation technologies, possible overbidding/underbidding practices, the exposure of an industry to global trade and its energy needs, average rates of return in the energy sector, etc.

6. Based on your experience, has State aid granted under the EEAG or the GBER generally achieved the relevant energy objectives while maintaining a competitive internal market?

Please explain: *1000 character(s) maximum*

Please refer also to Q5.

As mentioned, the Guidelines aim to achieve climate change and energy objectives and simultaneously affordable retail prices for the benefit of consumers.

However, given the controversial nature of these issues Member States still retain significant discretion when designing their public support measures due to the fact that much of the guidance is fairly vague and open ended.

Furthermore, current rules do not properly address system security nor avoid market distortions. System security requires adequate provision of firm capacity. Ideally, firm capacity is a product that, as long as provided by a competitive market – a capacity market -, should not be considered as State aid nor be subject to State aid rules; that would simply be a competitive market. Moreover, firm capacity can be traded among Member States (assets in a MS can provide firm capacity to a neighbouring one) and therefore be fully within the internal market realm, just as electrical energy or other goods.

In any case, and as long as it remains under State aid rules, current approval process should be much shorter. Quite often firm power measures have an urgency incompatible with current delays of nine month or more. We consider that all these issues should be re-discussed with the enter into in force of the Clean Energy Package (CEP) provisions and the revision of the 2014-2020 EEAG guidelines, so that they should be fully in line with all the EC plans to guarantee a long term legal and regulatory stability for investments;

7. Based on your experience, have there been any unexpected or unintended results from the implementation of the EEAG and the corresponding GBER provisions?

Please specify: 1000 character(s) maximum

Please refer to Q1

We would like to comment on two consequences.

The more immediate one has to do with the CRM approval procedure. As any CRM is considered as State Aid, Member States must seek the EC authorization. The procedure has proved to be long and uncertain. Member States are incentivized not to seek it, when they do is because a system risk is perceived on a short time horizon, and consequently is questionable that the authorization can be on time. The more efficient solution is to consider firmness as another product to be traded. A significantly worse second best is to speed up and ease the required authorization process.

A more distant effect has to do with the excessive leniency showed towards FiT and other inefficient support schemes. It has led to excessive costs (e.g. the Spanish PV bubble). Even if outside the EEAG and GBER scope, putting the full burden of these costs on the customers' shoulders has been and keeps hindering the electrification of the European economy that decarbonisation demands.

8. Are there sectors (at NACE 4 level[2]) and products (at Prodcom 8 level[3]) which, were included in the list of eligible sectors and products for reductions under section 3.7.2. of the EEAG (c.f. Annex 3 and Annex 5 of the EEAG), but which, according to your experience, were not particularly affected by the financing costs of renewable energy support and therefore were not put at a significant competitive disadvantage?

[2] NACE is derived from the French "Nomenclature statistique des Activités économiques dans la Communauté Européenne" (Statistical classification of economic activities in the European Community). It designates the various statistical classifications of economic activities developed since 1970 by the European Union. According to NACE rev.1.1: http://ec.europa.eu/eurostat/ramon/nomenclatures/index.cfm?TargetUrl=LST_CLS_DLD&StrNom=NACE_1_1&StrLanguageCode=EN&StrLayoutCode=HIERARCHIC

[3] Production Communautaire list, available at: https://ec.europa.eu/eurostat/statistics-explained/index.php/Industrial_production_statistics_introduced_-_PRODCOM PRODCOM is a survey, with an at-least-annual frequency, for the collection and dissemination of statistics on the production of industrial (mainly manufactured) goods, both in value and quantity terms, in the European Union. The PRODCOM survey is based on a list of products called the PRODCOM list which currently comprises about 4000 headings relating to industrial products and some industrial services. These products are detailed at an eight-digit level.

9. Are there sectors (at NACE 4 level[4]) or products (at Prodcom 8 level[5]) which, according to your experience, were particularly affected by the financing costs of renewable energy support and therefore were put at a significant competitive disadvantage, but were not included in the list of eligible sectors for reductions under section 3.7.2. of the EEAG (c.f. Annex 3 and Annex 5 of the EEAG)?

According to NACE rev.1.1: http://ec.europa.eu/eurostat/ramon/nomenclatures/index.cfm?TargetUrl=LST_CLS_DLD&StrNom=NACE_1_1&StrLanguageCode=EN&StrLayoutCode=HIERARCHIC
[5] Production Communautaire list, available at:

10. Based on your experience, have the minimum own contributions of the full electricity surcharges of 15 % of the full renewable surcharge, and 4 % and 0.5 % of the Gross Value Added

of the undertaking concerned (see points 188 and 189 of the EEAG) been adequately set to ensure a sufficient financing basis for the underlying energy policy?

11. Based on your experience, have the reductions in electricity surcharges given to energy-intensive users (EIUs) created market distortions?

Please substantiate your answer: *3000 character(s) maximum*

As a general principle energy taxation, exemptions or reductions should be harmonized at EU level and aligned with the EU's energy and climate policy objectives, and shall help providing signals to use the most cost effective instruments to achieve such objectives. In some cases, reductions in electricity surcharges could deter consumers from energy efficient behavior and from the adoption of energy efficiency and renewable technologies.

12. Based on your experience, what impact have reductions granted to energy intensive users had on renewable energy charges and other relevant charges paid by non-energy intensive industrial consumers and households?

Please substantiate your answer: *3000 character(s) maximum*

As a general principle, any charge aimed at financing technologies and policies of public interest, such as renewable energy incentive mechanism, should be paid by the Community and not only by electricity consumers. In this sense, general system charges should be collected through general taxation or, as a second best, through energy bills including gas and oil bills. The current situation, with only electricity consumptions bearing RES target costs, endangers electrification process and its contribution to 2050 decarbonization.

As a matter of fact, the surcharges not borne by EIUs have to be transferred to other energy consumers, mostly SMEs and households. Therefore, the competition between SMEs across EU is affected by different tariff regime among Member States.

In Italy, for instance, system charges (not including taxes and VAT) currently weight up to 25% of the electricity bills and their considerable amount affects the transparency of the bill itself because general system charges are added to supply and system costs.

By transferring general system costs into the general taxation, it is easier to obtain both the observation of tax fairness (as all payers would contribute according to their respective income rather than their energy consumption) and a better understanding of the actual supply service costs, which increases consumer awareness and competition among suppliers.

13. Based on your experience, has the higher aid intensity allowed under point 78 of the EEAG been adequate to address the double market failure linked to the higher risks of innovation and the environmental aspects of the project without creating unnecessary distortions of competition?

Please explain: *1000 character(s) maximum*

Efficiency:

In this section, we would like to know your opinion about the efficiency of the EEAG and the related GBER provisions.

14. Based on your experience, to what extent are the different compatibility conditions and methodologies included in the EEAG and the GBER related provisions sufficiently clear and easy to apply:

15. Based on your experience, how do administrative costs incurred by the aid application under the EEAG and GBER related provisions compare with the actual amount of compensation received?

Please rate from very low (administrative costs representing less than 1% of the actual amount of compensation received) to very high (administrative costs representing more than 20% of the actual amount of compensation received):

Please explain: *1000 character(s) maximum*

Relevance:

16. Based on your experience, have the EEAG and GBER adequately addressed recent market developments or technological changes such as:

Please explain: *5000 character(s) maximum*

Please refer to Q11

In general, the deployment of new technologies will involve market failures that will require public support. Can we imagine some form of support regime that rewards technologies based on their positive impacts (direct and indirect) in terms of GHG reduction per € spent, other environmental benefits, energy efficiency gains, spillover effect on the economy, that should boost also the type of investment we intend to carry out. As anticipated, the old guidelines and GBER did not take into consideration some market evolution, which were not yet developed at the time of their approval such as the Electric vehicle development with all its positive impact in the decarbonisation path.

Charging infrastructure for Electrical vehicles: the Commission should consider extending the block-exemption under the GBER and the compatibility assessment under the EEAG to aid measures for the development of charging infrastructure. This would be in line with the objectives of the DAFI Directive and consistent with the approach already adopted in relation to other infrastructures used for the development of alternative fuels, in particular the 2017 amendment of the GBER that classified public financing of alternative fuel infrastructures at ports as block-exempted aid. The justification in the GBER for this specific amendment - the potential to contribute to the decarbonisation and enhancement of the environmental performance of the transport sector – is equally applicable to charging infrastructure for road transport.

In case SA.46574 notified by Germany, the Commission acknowledges that without the aid the investors would have little to no financial incentive to invest in the infrastructure. In fact, new charging

infrastructure would not be deployed without funding, as the currently small number of electric vehicles in circulation, the high investment costs and the relatively small amount of electricity supplied at a charging station do not allow for a cost-effective operation.

This practice of the Commission is certainly helpful and it is desirable that the Commission will continue relying on this approach in the future. It is submitted, however, that the Commission's policy would be more effective if the Commission, in authorizing future aid, required the Member States to complement any investment aid with regulatory reforms intended to create appropriate incentives for the electrification of the transport sector.

On Re-powering: Between 2020 and 2030, a significant share of the renewables installed capacity will come to the end of its operational lifetime; repowering can be an affordable solution to efficiently use RES resources in the best sites. Current authorization procedures are burdensome and outdated (they do not take into account most recent technologies) and hinder RES repowering, therefore they should be reviewed and streamlined.

On Centralized and decentralized system: The 2014-2020 EEAG were thought for centralised energy systems and in general, it does not fit the provisions established in the CEP, with an ambitious plan for energy transition and quick evolution to decentralised energy market. For the future recast guidelines, we should bear in mind that market distortions should be avoided. Most of the listed new technologies do not need for a specific aid; they all could coexist in the market on technology-neutral market based principle.

Hydrogen is a very versatile energy carrier, as it can for instance be combined chemically with other molecules to synthetically produce various hydrocarbon chains (e.g. synthetic methane and other e-fuels) and so be used in many final energy uses. It could therefore represent a potential missing link in the energy transition for a deep decarbonization of the economy. Currently 98% of hydrogen is produced from fossil fuel being responsible for yearly CO₂ emissions comparable to Indonesia and UK combined, only 2% is produced by electrolysis process. Hydrogen produced by electrolysis through renewable electricity could be the potential missing link in the transition to the decarbonization, it will be mainly complementary to direct electrification to tackle emissions in "harder to abate" sectors and it allows the coupling of the different sectors of the economy. However, the production of such hydrogen and subsequent transformations is a costly and energy intensive process. Therefore, economics and the attention to energy efficiency suggest that it should be used just as a complementary means of decarbonization in comparison to more cost-efficient and energy efficient alternatives such direct electrification. Currently there is no common agreed definition for the different types of synthetic gases or hydrogen, so the terminology surrounding these gases as potential solutions for decarbonizing gas sector can be misleading and subject to different interpretation. Without a common understanding on definition and on which hydrogen production pathways can really deliver a GHG emission reduction, a coherent support policy is not possible; hence, as first step it is paramount to reach a Europe-wide definition. Therefore, the revised EEAG and the GBER has to recognize the

value of the greenest and enabling solutions for sector coupling that can unlock new sources of flexibility.

Energy infrastructures: All across Europe there will be needs to modernize, upgrade and develop networks. The distribution grid will have to accommodate new demand as electrification progresses and host new renewable generation. Therefore, the new distribution network will have to be operated in a much more dynamic way, due to the changing nature of electricity flows. The energy infrastructure needs to be enhanced and digitalized in order to exploit cross-sector synergies, leveraging on increased decentralization, electrification of end-uses and increasingly active consumers, ensuring at the same time adequacy, security and resilience of the whole system. A framework to facilitate investments in digitalization should be set-up, along with a promotion of output-based regulation to allow the extraction of flexibility from Distributed Energy Resources (DER). The development of smart grids can be facilitated by easing the access of smart grid projects to public support such State aid by allowing projects to be funded also in non-assisted areas.

17. To what extent do recent economic developments – such as the falling renewable energy costs and possible changes to trade intensity and electro intensity of the sectors concerned – impact the relevance of the rules which apply to reductions for energy-intensive users (EIUs)?

Please explain: *3000 character(s) maximum*

Coherence:

In this section, we would like to know your opinion on the extent to which the EEAG and the related GBER provisions are coherent with other EU policies and legislations.

18. Based on your experience, to what extent are the EEAG and the related GBER provisions coherent with relevant EU policies and legislation such as:

Please explain: *5000 character(s) maximum*

We underline the fact that the lack of a Grandfather clause in the new Climate and Energy law undermines the legal certainty principle for new investment decisions. Such certainty is crucial, and undermining it would drive up costs substantially. To avoid this, State aid decisions that have already been made should continue to be applied, regardless of the new laws.

[6] This directive is under review. The latest text can be consulted on: [https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2016/0380\(COD\)&l=en](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2016/0380(COD)&l=en)

[7] This regulation is under review. The latest text can be consulted on: [https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2016/0379\(COD\)&l=en](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2016/0379(COD)&l=en)

[8] This directive is under review. The latest text can be consulted on: [https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2016/0377\(COD\)&l=en](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2016/0377(COD)&l=en)

19. Have the EEAG and GBER rules on exemptions or reductions from energy taxation produced inconsistencies with other EU rules?

Please explain: *1000 character(s) maximum*

As a general principle energy taxation, exemptions or reductions should be harmonized at EU level and aligned with the EU's energy and climate policy objectives, and shall help providing signals to use the most cost effective instruments to achieve such objectives