

EGEC response to the call for contributions on Competition Policy supporting the Green Deal

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EGEC welcomes the European Commission's call to revise its competition policy that will support the successful implementation of the European Green Deal. Our observations and recommendations will focus on **State aid control: EU Guidelines for State Aid for Energy and Environmental Protection (EEAG) and the General Block Exemption Regulation (GBER)**.

The need for revision is indisputable. The current State Aid guidelines were adopted before the Clean Energy Package for all Europeans (2015) and the new priorities set out in the European Green Deal (2019). Furthermore, the EU climate and energy targets are currently being revised as part of the "Fit for 55%" Package and the 2050 climate neutrality target. Given that both - the EEAG and GBER - are crucial instruments in supporting the Member States in their efforts to meet climate and energy targets, there is a need for further adjustment and alignment.

1. What are the main changes you would like to see in the current State aid rulebook to make sure it fully supports the Green Deal? Where possible, please provide examples where you consider that current State aid rules do not sufficiently support the greening of the economy and/or where current State aid rules enable support that runs counter to environmental objectives.

- **Further alignment with the 2030 climate and energy framework and the 2050 climate neutrality target**

The current guidelines were designed to support Member States reaching their 2020 targets. This approach should be maintained within the ongoing revision of the State Aid legislation.

We recommend aligning the EEAG and GBER to the 2030 climate and energy framework and the 2050 climate neutrality target. Moreover, the revised State Aid legislation should also include the provisions laid down in the **Clean Energy Package for All Europeans**, and the recast of the **Renewable Energy Directive** (2018/2001/EU) and the **Energy Efficiency Directive** (2012/27/EU and 2018/2002/EU).

- **Strengthening the support for technology-specific tenders**

The current guidelines outline technology-specific tenders as an exception¹. In its initial design, a more prominent role has been given to the technology-neutrality approach. The main assumption behind technology-neutrality principle is that all technologies compete against each other on a level playing field.

However, practice shows that comparing variable renewables electricity capacity on a single measure of capital cost: cost/MWe, or only using the LCOE method and not integrating the system costs and negative externalities, is the wrong approach. As highlighted in the 2018 report of the Council of the European Energy Regulators, 8 Member States opted for technology-specific tenders, while 2 have exclusively applied technology-neutral tenders. The report concludes that in most cases **tendering schemes have been set up on the national level as technology-specific** rather than technology-neutral².

The revision of the guidelines should reflect this reality. All competitive bidding processes need to be differentiated according to the technical characteristics of each technology (*cost, size, risk profile, load factor, project lead time, ability to provide system services etc*). This approach would ensure the most cost-efficient deployment of renewable energy sources that would meet the EU's 2020 and 2030 renewable energy targets and support the EU's long-term decarbonisation.

We recommend strengthening the role of technology-specific tenders by maintaining the link to the provisions outlined in **Article 4** of the Renewable Energy Directive (2018/2001/EU)³. It includes the provisions for developing a fair basis of cost comparison between energy sources that goes beyond the unique LCOE approach, taking into account the actual system costs, external factors, and analysing the ability of the energy market models to properly remunerate the various benefits of geothermal energy in an industrial context of intensive capital investment (CAPEX) and marginal operational costs (OPEX).

LCOE is one of the most used criteria to compare the competitiveness of different energy sources, notably in policy making. However, it is a very partial indicator, as there is no consideration of actual system costs (the cost of transmission), other network costs (such as the impact on system balancing, state/system energy security), or the costs of external factors (such as government-funded research, residual insurance responsibilities borne by the government, external costs of pollution damage). Current

¹ [Guidelines on State aid for environmental protection and energy 2014-2020 \(2014/C 200/01\)](#), **Article 3.3 Aid to energy from renewable sources**, (110) However, given the different stage of technological development of renewable energy technologies, these Guidelines allow technology specific tenders to be carried out by Member States, on the basis of the longer-term potential of a given new and innovative technology, the need to achieve diversification; network constraints and grid stability and system (integration) costs.

² [Council of the European Energy Regulators](#), Tendering procedures for RES in Europe: State of play and first lessons learnt

³ [Renewable Energy Directive \(2018/2001/EU\)](#), **Article 4.5 Support schemes for energy from renewable sources**, Member States may limit tendering procedures to specific technologies where opening support schemes to all producers of electricity from renewable sources would lead to a suboptimal result, in view of: (a) the long-term potential of a particular technology; (b) the need to achieve diversification; (c) grid integration costs; (d) network constraints and grid stability; (e) for biomass, the need to avoid distortions of raw materials markets.

market models are unable to remunerate energy sources with low operational costs, hence there is a need for an 'out-of-market' remuneration (feed-in tariffs, contracts for difference, premiums, capacity remunerations).

- **Extending state aid measures to thermal energy storage systems and sustainable extraction of critical raw materials**

The revision of the guidelines must extend support schemes beyond energy infrastructure, electricity, heating and cooling. It must also include projects on the application of thermal energy storage with renewable energy sources and sustainable extraction of lithium from geothermal brines, a critical raw material of significant interest to EU industrial strategies and decarbonisation.

The replacement of fossil fuel installations by geothermal and other renewables comes along with a growing need for energy storage capacity. State Aid will be necessary, especially for energy storage projects that are not market-ready yet, such as the new generation of high-temperature underground thermal energy storage systems (UTES).

Under the current framework of GBER, thermal energy storage is not expressly mentioned, and it is unclear whether such aid measure would fall under **Article 46** on district heating infrastructure or **Article 48** on energy infrastructure.

Moreover, given the need for sustainable supplies of lithium, it is crucial to assist Member States to support geothermal lithium extraction. Many geothermal sites along the Upper Rhine Valley have started to extract lithium from their brines making this the most sustainable means of European sourcing for this vital metal. Geothermal lithium differs from traditional lithium mining in that it has zero climate or environmental impact and leaves a negligible ground or water footprint. The EU has the opportunity to create the foundation of the full lithium-ion battery value-chain in Europe by financing projects on geothermal lithium supplies.

These new provisions regarding the sustainable extraction of critical raw materials should be based on **Article 191** of the Treaty on the Functioning of the European Union (TFEU), that aims to preserve, protect and improve the quality of the environment. It also specifically highlights the need for a careful and rational use of natural resources.

We strongly recommend the European Commission to explicitly address state aid measures for thermal heat storage and sustainable extraction of minerals in the upcoming revision. It is of utmost importance to support and provide clear guidelines to EU Member States on how they can channel their public investments in these types of projects.

- **Ensuring well-designed and effective capacity mechanisms**

The Commission and the Member States should focus their efforts on reducing the persistent fossil generation capacity in Europe, while continuing to pursue and implement ambitious and stable renewable energy policies. Practice shows that under the current framework, capacity payments discourage investments in geothermal and other renewable energy sources.

Since the introduction of State Aid for energy and environment, capacity mechanisms have been perceived as a type of controversial aid given to gas and coal power plants. An [investigation](#) conducted by Greenpeace found that in 2018 almost €58 billion or 98% of these subsidies was added to energy bills to prop up coal and gas plants and in the last twenty years.⁴ Spending on capacity mechanisms across the EU has nearly quadrupled.

The revised guidelines should promote renewable electricity supply without distorting competition or trade in the EU Single Market. It should support EU Member States in directing its sustainable investments in the development of local, renewable, reliable and competitive capacities.

- **Providing a clear methodology for defining innovative technologies**

The current GBER foresees that “aid shall be granted to new and innovative renewable energy technologies in a competitive bidding process open to at least one such technology”.⁵ However, there is no reference to the methodology that clearly defines a “new and innovative technology”. For example, it is unclear if Member States can grant aid for innovative technology such as Enhanced Geothermal Systems (EGS) or Closed Loop Systems.

This should be addressed in the new guidelines as it can lead to different interpretations of the GBER in the future.

- **Continue granting financial support for renewable energy sources**

As long as fossil fuels subsidies are still granted by the Member States and insufficient pricing of the cost of associated externalities remains alongside the lack of an EU wide common scheme favouring renewables, State Aid legislation must continue to level the playing-field with incentives and exemptions for geothermal and other renewable energy projects.

⁴ Greenpeace 2018 EXPOSED: €58 billion in hidden subsidies for coal, gas and nuclear, <https://www.greenpeace.org/eu-unit/issues/climate-energy/1519/exposed-e58-billion-in-hidden-subsidies-for-coal-gas-and-nuclear/>

⁵ [General block exemption Regulation \(GBER\)](#), **Article 42.4 Operating aid for the promotion of electricity from renewable sources**

Furthermore, geothermal energy is put at a significant disadvantage by a focus on the internal market for gas rather than heat. This allows fossil gas subsidises across its value-chain from infrastructure, distribution, appliances, fuel purchases and even training for installers.

2. If you consider that lower levels of State aid, or fewer State aid measures, should be approved for activities with a negative environmental impact, what are your ideas for how that should be done?

a. For projects that have a negative environmental impact, what ways are there for Member States or the beneficiary to mitigate the negative effects? (For instance: if a broadband/railway investment could impact biodiversity, how could it be ensured that such biodiversity is preserved during the works; or if a hydro power plant would put fish populations at risk, how could fish be protected?)

- **Removing fossil fuels subsidies must now be immediate and definite**

The phasing out objective has been outlined in the State Aid guidelines for years without any concrete implementation.⁶ Fossil fuels subsidies continue to distort the EU energy market and do not provide a level playing field for geothermal and other renewable energy sources.

As highlighted by the Treaty, competition policy is one of the means of achieving the general objectives cited in **Article 3 of the Treaty** that refer to sustainable and balanced growth, economic and social cohesion, social progress etc. Reference is also made in this respect to **Article 120 TFEU**:

*"Member States shall conduct their economic policies with a view to contributing to the achievement of the objectives of the Union as defined in Article 3 of the Treaty on European Union and in the context of the broad guidelines referred to in Article 121(2). The Member States and the Union shall act in accordance with the principle of an open market economy with **free competition, favouring an efficient allocation of resources**, and in compliance with the principles set out in Article 119"*

The revised guidelines should enhance these provisions. It has to explicitly emphasize that any type of public support (subsidies, tax breaks, interest-free loans etc.) for activities with a negative environmental impact or emitting technologies must be prohibited.

⁶ [Guidelines on State aid for environmental protection and energy 2014-2020 \(2014/C 200/01\)](#), Introduction, (6) *It should be recalled that the Resource Efficiency Roadmap (5) as well as several Council conclusions call for a phasing out of environmentally harmful subsidies (6). These Guidelines should therefore consider negative impacts of environmentally harmful subsidies, while taking into account the need to address trade-offs between different areas and policies as recognised by the flagship initiative. Aid for the extraction of fossil fuels is not included in these Guidelines.*

- **Addressing market failures and ensuring fair competition for heat services in the EU**

The revised State Aid legislation should also address the significant competitive distortion caused by regulations relating to the Internal Market for Gas, which gives it a dominant market position at the expense of competition from renewable heating and cooling services, particularly from geothermal energy.

Heat accounts for half of the EU's total energy consumption. About 80% of this heat consumption comes from fossil fuels which is locked in by EU and government subsidies.

Article 176 of the Treaty calls for an internal energy market that ensures security of supply, interconnectivity as well as the promotion of energy efficiency, energy savings and renewable energies. Furthermore, **Article 108 of the Treaty** clearly mentions that:

*"The Commission shall, in cooperation with Member States, keep under constant review all systems of aid existing in those States. It shall propose to the latter any **appropriate measures required by the progressive development or by the functioning of the internal market**"*

However, the Internal Market for Gas regulatory base institutionalises continued dependence on fossil fuel imports, the use of existing and the creation of new publicly funded fossil infrastructure and even fuel consumption in a comprehensive regime of direct and indirect fossil fuel subsidies. It is not consistent with a competitive internal market for the provision of heating services nor the EU's climate and energy targets outlined in the **Article 23 of the Renewable Energy Directive (2018/2001)** nor subsequent policy orientation such as the **Communication on 'stepping up Europe's 2030 climate ambition' (COM(2020) 562 Final)**.

The Internal Market for Gas legal bases puts geothermal energy at a significant competitive disadvantage. This issue has been addressed already by EGEC in September 2020 via an official letter addressed to the Executive Vice-President Margrethe Vestager and Director-General Guersent (DG COMP).⁷

3. If you consider that more State aid to support environmental objectives should be allowed, what are your ideas on how that should be done?

a. *Should this take the form of allowing more aid (or aid on easier terms) for environmentally beneficial projects than for comparable projects which do not bring the same benefits ("green bonus")? If so, how should this green bonus be defined?*

b. *Which criteria should inform the assessment of a green bonus? Could you give concrete examples where, in your view, a green bonus would be justified, compared to*

⁷ EGEC, The European Union must ensure fair competition for heat services in the EU, <https://www.egec.org/the-european-union-must-ensure-fair-competition-for-heat-services-in-the-eu/>

examples where it would not be justified? Please provide reasons explaining your choice.

We welcome the Commission's intention to support governments that are prioritising their public investments for sustainable projects by offering them a "green bonus". We fully support the intention of allowing more aid on easier and clearer terms for **renewable and environmentally beneficial projects**.

However, when designing the "green bonus" criteria, it is crucial to highlight that more State Aid can be used exclusively for projects that make a genuine contribution to EU sustainable development. The Commission must make clear that **no public finance can be used for projects that undermine EU's effort to achieve climate neutrality by 2050**. In this respect, we fully subscribe to the [statement](#) made by Margrethe Vestager, the Executive Vice President, in which she underlined that the Commission: *"might refuse to approve aid that would harm the environment, or would keep polluting factories or power plants operating"*.

In our view, the following should be considered when granting the green bonus:

- Compliance with the EU Green Deal objectives
- The impact of the aid measure towards the achievement of the 2030 EU target for renewable energy sources
- The contribution of the aid measure towards the achievement of the 2050 climate neutrality target

The new additional criteria and the definition of the green bonus should neither supersede nor cancel the existing ones. When an aid measure would contribute towards achieving climate-neutrality, Member States would still need to demonstrate that their support is needed in light of addressing market failures and is proportionate to the minimum needed to achieve those objectives while not unduly distorting competition.

4. How should we define positive environmental benefits?

a. Should it be by reference to the EU taxonomy and, if yes, should it be by reference to all sustainability criteria of the EU taxonomy? Or would any kind of environmental benefit be sufficient?

We welcome the Commission's intention to define "positive environmental benefits" by reference to the EU taxonomy on sustainable development. This Regulation recognises **geothermal energy sources as an effective solution that contributes to "climate change mitigation and adaptation"** and provides detailed technical screening criteria for determining when an economic activity can be considered sustainable.

At the same time, Member States are also taking initiative on defining the environmental sustainability initiatives and providing clear guidelines on how these can be categorised. For example, the Netherlands Authority for Consumers and Markets

(ACM) published its draft sustainability guidelines⁸ that outlines its approach of assessing the compatibility of sustainability initiatives with competition law. A new feature in the Draft Guidelines is the proposal to consider in the competition law assessment of environmental sustainability initiatives *the benefits for society as a whole instead of only the user group buying or consuming the involved products*. According to ACM, this means that for an environmental-damage agreement to be allowed under the competition rules “the benefits for society as a whole must be equal or greater than the disadvantages for users”.

The same initiative has been launched by the Greek Competition Commission with a staff discussion paper⁹ on sustainability issues and competition law. The German Bundeskartellamt is also reviewing the issue of open markets and sustainable economic activity, notably discussing how to take greater account of sustainability aspects in competition analysis.¹⁰

We welcome the efforts of EU Member States to define positive environmental benefits of projects that receive State Aid. Particularly, we support the Dutch definition that goes beyond the consumer-centric approach. We believe that the key is to apply the competition rules in a way that takes into account market failures and environmental price externalities (like environmental and climate change-related costs) which are not directly reflected in market prices, but borne by the society as a whole.

In this context, we strongly recommend the Commission to take note of the Member States’ actions on national level. Furthermore, it is essential to link the definition of “positive environmental benefits” with the contribution to the 2050 climate neutrality target and the EU RES target.

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⁸ Netherlands Authority for Consumers and Markets (ACM), DRAFT Guidelines Sustainability agreements, <https://www.acm.nl/sites/default/files/documents/2020-07/sustainability-agreements%5B1%5D.pdf>

⁹ Greek Competition Commission, “Sustainable development and competition law Towards a Green Growth regulatory osmosis”, <http://www.unsdsn.gr/sustainable-development-and-competition-law-toward>

¹⁰ Bundeskartellamt, Offene Märkte und nachhaltiges Wirtschaften – Gemeinwohlziele als Herausforderung für die Kartellrechtspraxis, https://www.bundeskartellamt.de/SharedDocs/Publikation/DE/Diskussions_Hintergrundpapier/AK_Kartellrecht_2020_Hintergrundpapier.pdf?__blob=publicationFile&v=2