

DG Competition open call: Competition Policy supporting the Green Deal

ENTSO-E response

Part 1: State aid control

Question 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.

Question 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?)

ENTSO-E response:

The aim of the EEAG (2014-2020) was to support EU countries in reaching their 2020 climate and energy targets while addressing the market distortions that may result from subsidies granted to renewable energy sources. The EU climate and energy targets have recently been revised as part of the Clean Energy Package for All Europeans and the new climate neutrality target by 2050, as endorsed by the European Council in December 2019, will soon be enshrined in the forthcoming European Climate Law.

Given that the EEAG and the GBER are crucial instruments in supporting Member States in their efforts to meet climate and energy targets in the context of a competitive and sustainable EU internal energy market, there is a need for further alignment of targets and objectives of those instruments with the new EU climate neutrality goals in order to fully realize the Green Deal ambition. In light of the need to ensure consistency with the EU Green Deal objectives and new technological developments as well as challenges in the energy transition, the revision of the EEAG should provide for a more simplified, forward-looking and future-proof enabling framework for Member States to help them reach the EU environmental and energy objectives in a cost effective manner and with minimum distortions of competition and trade within the EU.

The present framework with regard to competition rules in the R&D sector is fairly flexible and largely favours innovation. It would therefore be advisable to preserve this balanced approach and avoid adding unnecessary regulations in this area so as to not stifle innovation. However, the EEAG review should take into account new technological developments needed for large-scale

decarbonisation and should serve as an instrument to enable further the development of new and innovative technologies in the future (e.g. hybrid offshore developments, new energy carriers and system integration technologies, etc.) to support Member States in reaching the Green Deal objectives.

Changes in the state aid framework for energy should be consistent with and build upon the provisions of the Clean Energy Package for All Europeans, in particular the Renewable Energy Directive, the Electricity Directive and the Electricity Regulation which are being implemented across Member States.

To meet the EU green deal objectives, the future energy system will need to rely on an ever growing share of geographically distributed renewable energies and other low-carbon energy sources, as well as flexible integration of different energy carriers, all while remaining resource-efficient and secure. This will have a significant impact on the generation mix across Member States in the future in order to achieve Green Deal objectives. Operational challenges related to the power system management and ensuring resource adequacy are expected to increase as well. In order to anticipate and prepare for such challenges, Transmission System Operators calculate which generation capacities are required at what location to meet the demand for energy and reserves based on a common EU-wide methodology and assess adequacy risks and concerns. These calculations are complemented by ENTSO-E's European Resource Adequacy Assessment (ERAA), which is based on EU-wide methodologies developed by ENTSO-E and approved by ACER.

As a result, the introduction and operation of capacity mechanisms (including strategic reserves) by Member States is only permitted under strict conditions and only if these mechanisms are essential for ensuring resource adequacy. As per the Electricity Regulation (EU) 2019/943, the introduction and the design of capacity mechanisms are strictly regulated and subject to EC approval under specific conditions. Furthermore, EU Regulations prescribe that capacity mechanisms must be temporary in nature and should not create undue market distortions or limit cross-zonal trade, as well as 'not go beyond what is necessary to address the adequacy concerns' of a Member State (as per Article 22 (1) of Regulation (EU) 2019/943). This Regulation also includes specific design requirements of capacity mechanisms with regard to emission limits. Article 22(4) also introduces precise emission limits which exclude generation units emitting CO₂ above a certain threshold (differentiated for 2019 and 2025) from receiving any payment from capacity mechanisms.

It is still likely that in the transition towards a climate-neutral society, Member States may have to rely on non-zero emission technologies to safeguard resource adequacy. In that context, as some may see capacity mechanisms as state aid mechanisms, it is important that any review of state aid rules, notwithstanding any potential emphasizing or promotion of elements put forward by the Green Deal, still allows for these mechanisms to fulfill their objective and enable a realistic and feasible solution to ensure resource adequacy at least cost for consumers. Otherwise, Member States may be confronted with a policy paradox that may no longer allow them to guarantee their resource adequacy, which remains a generally accepted objective of common interest.

Any plans for further regulatory interventions from the point of view of the Green Deal and competition law should go hand in hand with taking the applicable regulations into account to avoid

undermining regulatory certainty for investments, while maintaining resource adequacy. It should be recalled that not just the EU antitrust rules, but also the legislative acts of the Clean Energy Package already largely contribute to the Green Deal objectives, through inter alia, the mechanisms and objectives embedded in the Governance Regulation and its forthcoming updates, and the strict limits for emissions as per the Electricity Regulation. The focus on ex post regulation through enforcement of competition rules may not be necessary, taking into account the already well-developed framework in the area of electricity market integration and transmission.

Moreover, according to the TFEU, Member States have sovereignty over their energy mix and may choose different paths to fulfil their national and the EU targets and to reach climate neutrality. In this context, in a recent CJEU ruling of 22 September 2020 on "Hinkley Point" Court confirmed that on the basis of Article 194 TFEU Member States retain full sovereignty with regard to the choices made in terms of their energy mix. It follows from this ruling that in applying EU competition policy in favour of the Green Deal, the EC cannot withdraw rights from Member States when they grant State aid to energy operators as long as the aid in question is in line with the choice of energy mix. The revised EEAG should ensure that a balance between the different objectives is respected and preserved in the future and that it does not preclude Member States from choosing their own paths to decarbonisation to reach the Green Deal objectives.

Finally, the review of the State Aid rules should aim not only at updating the framework guidelines in light of the recent legislative, market and technology developments, but also at streamlining their application processes to ensure an agile and fit-for-purpose framework to meet future challenges.

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

Question 4. How should we define positive environmental benefits? a. Should it be by reference to the EU taxonomy¹ 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?

ENTSO-E response:

The Taxonomy Regulation aims to define a common classification system (taxonomy) to encourage private investment in sustainable growth and contribute to climate neutrality of the economy. The

¹ The EU Taxonomy Regulation (Regulation (EU) 2020/852 of 18 June 2020, OJ L 198, 22.6.2020, p. 13) establishes an EU classification system to facilitate sustainable investment. Under the EU taxonomy, most economic activities will be screened, and criteria will be determined (on the level of emissions, on recycling rates, water management requirements, etc) per activity area to determine whether it can be labelled as sustainable by investors and asset managers. While it does not apply to State aid, the classification could provide partial guidance as to the identification of projects with high environmental benefits or with high sustainability score.

taxonomy for climate change mitigation and climate change adaptation should be established by the end of 2020 in order to ensure its full application by end of 2021, while for the four other objectives, the taxonomy should be established by the end of 2021 for application by the end of 2022. Once fully implemented, the EU Taxonomy framework will provide some useful indications to identify environmentally sustainable activities, and it should also provide positive signals and incentives to investors to finance such more sustainable projects in the long term.

However, the Taxonomy Regulation applies primarily to private investments, and at present there is no direct legal link between the Taxonomy Regulation and the Guidelines on State aid for environmental protection and energy (EEAG). As the review of the EEAG will happen in parallel to the development and implementation of the new Taxonomy framework, linking the EEAG and the EU taxonomy at this stage may create legal uncertainty risks.

There is also an important distinction to be made between the nature of the two legislative instruments, and the competences provided under each instrument with respect to the powers granted to the Commission and to Member States. With the main aim of providing guidance and harmonised criteria for assessing the sustainability of private investments, the EU Taxonomy Regulation may not necessarily be the appropriate instrument as a basis for decisions related to investments eligible for state aid.

The State Aid guidelines were aimed at ensuring that in the process of delivering the 2030 and 2050 objectives, there is a cost-efficient approach, providing flexibility to Member States to define a low-carbon transition appropriate to their specific circumstances and encouraging research and innovation policy, among others. These principles should remain valid as well in the future. State aid can have a role in supporting security of supply and resilience and enabling market integration and the large-scale integration of renewable energy sources, particularly in connection to critical infrastructure such as electricity transmission networks which are crucial to facilitate decarbonisation of the energy system. There should also be flexibility for projects with significant environmental benefits to benefit from further support in line with the state aid guidelines even if they may not fall necessarily under the classification criteria of the Taxonomy Regulation as those projects or technologies may still be crucial for the energy transition by ensuring security of supply in the transition phase before cleaner alternative solutions become available. Where the market parties alone cannot deliver the infrastructure needed, State aid may be necessary in order to ensure that the EU's considerable infrastructure needs are met, especially with regard to infrastructure projects having a cross-border impact or contributing to regional cohesion and cooperation.

In the future, with the development of new enabling and innovative technologies, for example large scale offshore projects etc., a revised state aid framework will be needed which should be fit for purpose to enable the cost-effective deployment of renewable offshore energy, while taking into account the new energy transition context and the specificities of the emerging technologies, and the well-functioning of energy markets.

As the existing State Aid guidelines also stipulate, *'a measure addressing a generation adequacy problem needs to be balanced with the environmental objective of phasing out environmentally or*

economically harmful subsidies, including for fossil fuels. Similarly, a measure to reduce greenhouse gas emissions can increase the supply of variable power which might negatively affect generation adequacy concerns.' Such considerations become even more important in the context of the accelerating energy transition. The revision of the respective State Aid rules should not lead to the exclusion of mechanisms which could be necessary for ensuring resource adequacy for a given period of time and which have been approved by the EC as per the requirements of the Clean Energy Package. Otherwise, this may create regulatory uncertainty and put at risk the secure and sustainable energy transition (see also answer to Q1 and Q2 above).

Neither the Taxonomy Regulation nor the existing EEAG define directly what 'positive environmental benefits' are. There are significant considerations to be taken into account when evaluating what those benefits are in the context of the EU climate neutrality objectives and the challenge to ensure security of supply, sustainability, market and energy system integration, and affordability, which can be delivered through a variety of solutions. A broader definition of 'positive environmental benefits' would thus be more suitable in the future. Positive environmental benefits should not only be defined in connection with the direct benefits expected from a project, but also more broadly in terms of positive impacts supporting the transition to a more sustainable economy and environment.

Both the Taxonomy as a tool for sustainable transition and the State Aid Guidelines on Environment Protection and Energy will be key enabling frameworks for achieving the European Green Deal objectives. In that context, it can be beneficial to assess further whether and to what extent there should be a link in the future between the revised EEAG and the measurement framework provided by the Taxonomy Regulation for assessing how certain companies and activities may concretely contribute to the EU climate neutrality targets in the long term with a view to speeding up projects that are important enablers for the energy transition. However, in case a link is drawn between the two instruments, the consistency with the existing regulations and in particular with the current provisions of the Clean Energy Package should be ensured, in order to avoid any risks of regulatory uncertainty which may hamper the energy transition. Moreover, the future State Aid rules should not be limited to projects which fall under the narrower classification of the EU Taxonomy Regulation. It will be of key importance to ensure coherence between the EEAG and the Taxonomy Regulation frameworks in order to provide for well-aligned, efficient, complementary and enabling frameworks for sustainable investments supporting the EU Green Deal objectives.