

## State aid for environmental protection and energy - Call for contributions (DG COMP)

### FORATOM's proposal for answers

Dear sir or madam,

The European Atomic Forum (FORATOM) is the Brussels-based trade association for the nuclear energy industry in Europe. The membership of FORATOM is made up of 15 national nuclear associations and through these associations, FORATOM represents nearly 3,000 European companies working in the industry and supporting around 1.1 million jobs.

FORATOM fully supports the objectives of the Green Deal. State aid has, and will have, an important role to play in this respect, especially in a context where more and more European energy players are confronted with non-EU competitors strongly supported by their own national governments. This being said, FORATOM queries whether state aid rules should be specifically adjusted to promote such objectives. In its recent decision relating to the Hinkley Point Project (the "HPC Decision<sup>1</sup>"), the Court of Justice considered that Article 107(3)c TFEU did not require the demonstration that a planned aid pursued an objective of common interest in order to be declared compatible with the internal market.

Also, beyond strictly legal considerations, experience has also shown that the promotion under state aid rules of environmentally friendly sources of energy has affected negatively the electricity market leading, for example, to fluctuation of electricity prices, preventing further investment in such market and the destabilization of electricity markets.

For these reasons, FORATOM believes that the greatest caution should be exerted when using state aid rules to promote environmental objectives, and that such rules should not be amended specifically for Green Deal purposes. Further clarification of existing state aid rules could ensure that all technologies contributing to Green Deal objectives, and decarbonisation more particularly, may equally benefit from state aid support.

### FORATOM's response to the following questions

#### Part – State aid

**As input to the debate on how State aid control and environmental and climate policies work together – and how they could do that even better, please consider the following questions:**

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.

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<sup>1</sup> Case C 594/18 P, Austria v Commission, of 22 September 2020

**ANSWER:**

With the need to accelerate the decarbonisation of Europe's economy, the financing framework - including State Aid - needs to be updated in order to ensure a level playing field for technologies, whether mature or breakthrough, such as renewables, nuclear energy, as well as hydrogen and process applications.

We therefore recommend amending the State Aid rulebook in order to:

- Address the new technology developments that are currently absent.
- Ensure greater scrutiny of competition and market distortions, cost-effectiveness and security of supply.
- Take into account new market economic developments
- Take into account the level of support other non-EU competitors may benefit from.
- Apply a holistic approach to the energy system, in line with both the principle of technology neutrality and sector integration.

Thus, when applying the state aid rulebook, it is essential that Member State sovereignty on the choice of their energy mix, enshrined in Article 194.2 TFEU, be maintained and Member States be allowed to decide which energy technology they wish to support in order to achieve their decarbonisation targets and Green Deal objectives. In this respect, it is important to stress that in the recent HPC decision, the Court of Justice underlined that Member States were free to determine the composition of their energy mix, and that the principle of protection of the environment, the precautionary principle, the "polluter pays" principle and the principle of sustainability could not be regarded as precluding, per se, the grant of State aid for nuclear projects. It follows from the above that when evaluating the contribution of a given project to Green Deal objectives, the Commission should take into consideration the fact that nuclear contributes to decarbonisation.

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?)*

FORATOM does not believe that State Aid rules can enshrine how negative impacts should be dealt with. On the one hand, negative environmental impacts are already covered by the EU framework on environmental assessment<sup>2</sup>, which requires that plans, programmes and projects likely to have significant effects on the environment are made subject to an environmental assessment, prior to their approval or authorisation.

On the other hand, the quantification of negative environmental impacts is a very delicate and often subjective matter which should be dealt with at Member State level rather than by the implementation of State Aid rules, designed by nature to ensure and maintain fair competition on

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<sup>2</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0052>

the market. This principle was confirmed by the Court of Justice<sup>3</sup>, that without prejudice to the check that the activity supported does not infringe EU environmental law, it is not up to the Commission to consider any negative effects other than the negative effects of the aid on competition and trade between Member States.

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?*

**ANSWER:**

With the implementation of the European Green Deal, the objective of climate neutrality in 2050 must guide the update of the revision of the competition rules.

First, a full lifecycle assessment (LCA) could prove useful and relevant for the purpose of assessing the extent to which the proposed measure could reach the environmental objective. For example, a CO<sub>2</sub> emission LCA which is applied to all technologies in the same way.

Second, in order to ensure that environment and climate objectives are met, the assessment needs to be based on science. This will strengthen the technology neutrality principle and therefore include all low-carbon technologies (RES, nuclear, CCS, demand response, etc). It will also be in line with sector integration and sector coupling.

Finally, in light of the recent ECJ ruling<sup>4</sup>, it is submitted that the assessment of the compatibility of a planned aid must be reviewed updated particularly as far as the demonstration of the existence of market failure is concerned.

4. *How should we define positive environmental benefits? a. Should it be by reference to the EU taxonomy<sup>3</sup> 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?*

**ANSWER:**

The taxonomy framework applies primarily to private investors, thus there is no direct link with the state aid framework applicable to energy and environment.

Conversely, a referral to Green Deal objectives would appear beneficial provided Member States are granted the freedom to chose their energy mix , and contribution to Green Deal objectives is assessed in an objective manner.

A reference to EU taxonomy's criteria raises the question of policy consistency. Potential indirect impacts for public action, resulting from requirements of EU taxonomy implemented in the private sector, should be assessed. If a Member State grants aid to an economic activity qualified as environmentally sustainable, will this aid be compatible with new market dynamics?. On the contrary, if a Member State grants an aid to an economic activity qualified as environmentally unsustainable, will this aid be compatible with the new market dynamics?.

Although the need for minimal harmonization between the EU taxonomy framework and state aid rules (minimum requirements or general definition) would seem appropriate, the uncertainty about

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<sup>3</sup> Case C 594/18 P, Austria v Commission, of 22 September 2020

<sup>4</sup> Case C 594/18 P, Austria v Commission, of 22 September 2020

the indirect effects of such initiative on the public's action to allocate compliant state aid calls for further impact assessment.

Furthermore, the multiplication of investment financing schemes raises the question of accumulation of aid. This point needs to be updated taking into consideration parameters such a type of costs, funding sources, etc...

To conclude, given the fact that the Taxonomy is still under development, and no final decision has been taken as yet regarding the inclusion of nuclear - it would seem premature to establish a connection between the two mechanisms.