

Terna response to EC call for contribution on Competition Policy supporting the Green Deal

Terna welcomes the opportunity to provide its primary views on the competition policies supporting the Green Deal, which are going to be further elaborated in response to the Consultations on the Revision of the Guidelines on State aid for environmental protection and energy 2014-2020 (EEAG) published by the European Commission on 12 November 2020¹.

It is of utmost importance to ensure that competition rules are “fit for purpose” and up to date for the new challenges that the energy sector is facing toward the carbon neutrality targets. Therefore, Terna encourages a review process of the competition policies, in particular of the EEAG, recommending primarily to aim it at **ensuring the consistency of the policies with the whole new regulatory framework supporting the climate goals**.

Terna confirms its full support to the energy transition and, as a TSO, encourages a regulatory and legislative framework which considers the overall system needs. In fact, in the light of the progressive development of the EU grid and the internal energy markets, from the TSO perspective it is fundamental that the relevant legislation enables all measures required to guarantee the security of supply and the safe management of the electricity system.

Please find in the following our answers to questions no. 1 and 4, Part I.

Part 1: State aid control

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.

Terna fully embraces the view expressed by the EC in the Inception Impact Assessment for EEAG revision, where it states that the revision should result in a **modernised, simplified, easy to apply and future-proof enabling framework** to help reaching the EU environmental and energy objectives in a cost effective manner with minimum distortions of competition and trade within the Union. In short, the EEAG should allow Member States to face the new challenges brought by the decarbonization process by attracting consistent investments which otherwise would not be made.

The green transition to 2050 is time-critical: the revision must properly address the need for Member States to mobilize enormous amounts of investments, both in public and private sectors, which have to be implemented (and produce effects) the soonest.

In view of the above, we consider that State Aid rules need to be streamlined and updated in light of the recent legislative, market and technology developments, mainly in order to:

- **define general criteria to exclude the state aid nature of market-based measures which allow Member States to respond, quickly and with certainty, to the needs underlying the decarbonization process through the implementation of the necessary infrastructure capital intensive investments which require adequate forward price signals**
- **in this way, ease the administrative burden brought by the notification phase and reduce timing of definition and implementation of key instruments for the achievement of common interest objectives set at European level.** This applies both on a) Member States, which needs to notify some measures for

¹ <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12616-Revision-of-the-Energy-and-Environmental-Aid-Guidelines-EEAG->

the sake of legal certainty b) European Commission, which has to rule on cases with no (or negligible) impact on the internal market.

- Avoid any interpretation issue, which may lead to different application of the rules among the States.

Whereas the State Aid rules aim at creating a framework for policies to support the shift towards a low-carbon economy while avoiding potential negative effects on competition and trade, **market-based measures, by definition, must be considered out of the state aid framework and are to be exempted from pre-notification and approval processes.**

Hence, the **scope of the current State aid rules should be redesigned by excluding those measures based on a competitive, transparent and non-discriminatory mechanism** that allow the widest participation of interested parties, providing for a service/activity whose **remuneration is based on market prices** and is in any case proportionate.

It is understood that Member States should make use of such measures where they **are demonstrably in line with the objectives set at European level²**, such as the safe transition to a carbon-free system and the security of supply.

This shift would allow for Member States to quickly implement measures that stimulate investments through **adequate forward price signals.**

Among others, this exemption could apply to **long-term contracts for the development of renewable generation (RES) and storage systems**, both of which will play a crucial role in the future of the electricity system.

Among storage systems, a special mention has to be made for pumped hydro storage (PHS), which represents today the most mature and competitive storage technology and the main electricity storage technology in Europe, largely deployed across many Member States (90+% of storage power installed³). PHS provides balancing and ancillary services such as black start, frequency and voltage regulation control and resolution of network congestions, it allows for the maximization of RES contribution to cover energy demand and, finally, it increases system adequacy by covering residual demand during peak load hours and low RES production.

Although without adequate investments in energy storage systems it will be impossible to reach decarbonization targets, the economic feasibility of such investments is generally a major barrier for their development. In particular, PHS is a highly capital-intensive asset with a long pay-back period, for which it is difficult to obtain private investments – hence, the need to foster appropriate long-term market instruments for the development of PHS projects by exempting them from State Aid notification process.

In addition, well-designed capacity markets may promote through long term price signals the development of technologically advanced solutions having a low environmental impact, in line with the EU decarbonisation objectives, and coping with the system requirements arising from the increasing penetration of the non-programmable renewables.

Terna recommends that the **EEAG are amended in order to ensure their consistency with Regulation (EU) 2019/943; in particular, the EEAGs revision process should consider section 3.9 on Aid for generation adequacy as superseded by the new Regulation.** The latter, in fact, introduced a detailed discipline on adequacy of resources and, more specifically, the design principles and process for the development of capacity mechanisms (Articles 20-27) which provide for:

² A concrete example of measure labelled as *demonstrably in line with energy-climate objectives* is any measure included in the National Energy and Climate Plans

³ European Commission Study on energy storage – Contribution to the security of the electricity supply in Europe (May 2020).

- the possibility for Member States to introduce capacity mechanisms, subject to an evaluation of the potential impact on neighbouring States, aimed at addressing critical adequacy issues resulting after the (European and national) adequacy assessments;
- the need to comply with a number of conditions among which the same ones that are to be assessed by the European Commission pursuant to the EEAG. Those conditions include:
 1. the temporary nature of the measure;
 2. the presence of a market failure;
 3. the absence of market distortions and restriction to cross-zonal exchanges;
 4. remuneration through a transparent, non-discriminatory, competitive and technologically neutral process;
 5. the measure efficiently addresses the identified adequacy issues.

The obligations stemming from the Regulation are also considered to significantly reduce the discretion of the Member States in applying adequacy measures.

When reviewing the EEAGs it should also be clarified that any changes to the capacity mechanisms, in place at the date of entry into force of the Regulation, are not substantial and therefore do not require a new notification under the State Aid rules, if made pursuant to a more recent Regulation or pursuant to a methodology foreseen by the European Regulations (among all, the methodology approved by ACER pursuant to art. 23, paragraph 6 of the Regulation for calculating of the value of lost load or the cost of new entry for generation or demand response).

4. *How should we define positive environmental benefits? 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?*

As indicated before, new measures are needed to face new climate challenges and overcoming regulatory barriers is crucial to enable decarbonization. We consider that the revision of State Aid Guidelines provides the opportunity to better enable the above said measures by clarifying, simplifying and rationalising the relevant competition legislative framework.

The Taxonomy Regulation aims to define a common EU classification system to address private investments in sustainable growth also contributing to climate neutrality of the economy. This framework is still under construction.⁴ Once fully implemented, this harmonized framework will provide some useful indications to identify environmentally sustainable and should also provide positive signals and incentives to investors to finance such more sustainable projects in the long term.

However, the Taxonomy Regulation is primarily made to boost green finance 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 harmonized criteria for assessing the sustainability of specific activities and to address private investments to EU “green” financing instruments, the EU Taxonomy Regulation may not necessarily be the appropriate instrument as a basis for decisions related to investments eligible for state aid.

⁴ The Taxonomy delegated acts 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.

The EEAG, in fact, aim to minimize the use State Aid and diminish distortions to competition, while enabling the development of certain energy projects for which the society may benefit from an economic and environmental point of view, but also in terms of security of supply. In summary, any evaluation of the environmental benefits brought by the measure under assessment in the State Aid regime cannot relate exclusively to the labelling framework process introduced in the context of EU Sustainable finance which is different and which pursues different objectives than the EEAG. Hence, **the scope for application of EEAG and Taxonomy should be kept separated.**

Any overlap with the Taxonomy Regulation in fact **would introduce a concrete risk of regulatory uncertainty**, hampering the respect of the Clean Energy Package requisite and potentially leading to implementation delays and litigations.

Capacity mechanisms deserve a specific focus: the European legislator already foreseen in Regulation 2019/943 precise requirements on CO₂e emission limits for the generation plants which may be committed under a CM (Article 22). Those limits and requirements aim at balancing, on one hand, the need to ensure that the Market can efficiently address system adequacy issues, and on the other hand to avoid public financing of the most carbon-intensive technologies.

Hence, in (unhoped-for) case the capacity mechanisms will remain within the scope of EEAG, we consider that **Regulation 2019/943 shall be the only legislative act addressing such emission limits.**