

Vattenfall's response to the Call for Contribution on "Competition Policy supporting the European Green Deal"

Dear sir or madam,

Vattenfall is a European energy utility active in various European markets and continuously moving out from CO₂ heavy production assets, while largely investing into the production of renewable energy. This ambition does not only true for our own energy production but we are also actively engaged in the transition of a number of other (industrial) sectors, that account for a high degree of CO₂-emissions, e.g. steel, refineries, heavy duty transport and heat. National subsidies are necessary in various cases to safeguard investment and operation of either new or highly efficient technologies in the course of energy transition to reach the relevant climate and environmental protection objectives. On an overall basis the European Commission should make use of the planned revision of the European state aid rules, in particular the General Block Exemption Regulation (GBER) and the Energy and Environmental Aid Guidelines (EEAG) in order to develop a comprehensive enable framework to advance on the objectives of the European Green Deal and thereby achieving the increased EU 2030 targets to at least -55% and climate neutrality until 2050 in a fair and cost-efficient manner.

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.

EU state aid rules should particularly focus on incentivising Member States' instruments to achieve the EU energy and climate targets and to increase integration of different sectors, by e.g. limiting detailed requirements, taking regional and local specifications into consideration and incentivising the decarbonisation of the industry or supporting highly-efficiency district heating/cooling (DHC) systems.

The European state aid framework (GBER and EEAG) should therefore provide legally secure and supportive prevailing circumstance for investments and measures that directly contribute to the -55% target. To achieve this target and to finally reach climate neutrality in 2050, significant investments and technological innovation are needed including increasing efforts regarding financing, workforce, licensing etc.

The policy and state aid framework supporting these efforts should be

- consistently designed;
- reduced and simplified to the core minimum amount of regulation;
- immediately adapted and implemented;
- and valid within foreseeable time horizons.

Lengthy notification procedures of support programmes or individual notifications are counterproductive as they create uncertainty and delay for the implementing actors and are thus counteract the achievement of climate objectives. Hence, in order to contribute to the objectives of the European Green Deal notification procedures of national state aid instruments should be recognizably shortened to safeguard timely investments could substantially support energy transition to reach the target of at least -55% by 2030 and carbon neutrality by 2050. By revising the relevant

European state aid rules defining a time limit for state aid notification procedures should be considered.

Examples of the objectives in the framework of the European Green Deal currently not sufficiently reflected by the EEAG or GBER

1. The role of highly-efficiency district heating/cooling system

In densely populated urban areas, highly-efficiency DHC systems can substantially contribute to both the targeted -60% greenhouse gas emissions reduction from buildings by 2030 and the increase of the share of renewables and waste heat up to 38-42% (compared to 2015 levels) as outlined in the renovation wave communication.

To appropriately drive this transition in the buildings/heating sector, substantial support for highly-efficiency DHC systems as a whole is required. These systems integrate power-to-heat applications (electric boilers, large heat pumps etc. using renewable based electricity), Combined Heat and Power (CHP) plants (fired by natural gas, later on hydrogen or synthetic fuels), thermal storage, excess heat integration and utilization of originally renewable sources (e.g. geothermal or solar thermal), resulting in lowering the costs for infrastructure deployment, decarbonising urban buildings and supplying flexibility and stability for the increasingly volatile electricity system.

To unlock the potential of district heating or hydrogen to contribute to the transition to a climate neutral economy, the notification thresholds and the aid intensities should thoroughly be investigated in the e.g. in point 20 EEAG and the Art. 4 and Art. 25 GBER, in particular. As larger projects, normally handled by larger companies, do have a large impact and have large costs as well, intensity differentiation occur as an obstacle and should be deleted or reviewed. The minimum notification threshold should be generally increased to 75% and the aid intensities should at least to be doubled. Also, the notification threshold of 300 MW for the aid for cogeneration (CHP) in point 20 lit. d EEAG could be temporarily suspended as transformation of the district heating/CHP sector would also need some larger new built, particularly in transformation from coal to gas installations. EEAG and GBER should enabled Member States to flexibly design support addressing both “operating aid” and “investment aid”.

According to the renovation wave communication the GBER and EEAG review will lead to simplifying access to support for buildings renovation and to combining of different (EU and Member States) support instruments. This should not be only limited to measures for single houses and onsite-solutions. It would also be important to clarify that the cumulation of support instruments and aid is generally allowed up to the highest aid intensity or aid amount applicable to this aid. With regard to the targets and the requirements of the Energy Performance of Buildings Directive (EPBD), the Energy Efficiency Directive (EED) and the recast of the Renewable Energy Directive (REDII) already in place, the connection to efficient district heating should be subject to support as well. District Heating, not only by these directives but manifold in the European Green Deal, is recognised an infrastructure which helps reduce the primary energy demand in the residential sector by connecting existing and new buildings to renewable and waste heat sources. Therefore, it should be investigated which kind of support could be made applicable for connecting buildings to district heating and the extension of DHC systems.

Member States should be encouraged and allowed to facilitate the use of fossil-free technologies, renewable and decarbonised fuels, in particular with regard to Power-to-X technologies, which contribute to energy system transformation and decarbonisation of other sectors through energy system integration. Increasing integration of electricity and heat sector, as required by Art. 24 para. 8

REDII should be sufficiently supported by European State Aid rules. Using renewable base electricity in power-to-heat or power-to-hydrogen applications should e.g. not be subject to surcharges. This makes these applications rather unattractive and hampers to increase the integration of electricity, heating/cooling, and transport sectors for achieving European energy and climate 2030 targets¹.

As DHC is a purely local product, it does not affect the internal market, however the DHC infrastructure is very cost intensive and the payback periods are very long. Investments in energy transformation, in particular in these kind of integrating energy infrastructure, should be declared as being in line with the single market in the sense of Art. 107 para. 3 lit. b TFEU and completely exempted by GBER without notification thresholds and minimum aid intensities of 70% at least until 2030 to support the achievement of the -55% greenhouse gas reduction target.

2. Hydrogen, synthetic fuels and low carbon gas:

In the European hydrogen strategy and also the European Energy System Integration Strategy the European Commission acknowledges the important role of hydrogen to play in the energy transition and decarbonizing a number of sectors, where direct electrification is economically or technical not feasible, e.g. steel, chemicals and heavy duty transport. To stimulate the deployment of – in particular – renewable hydrogen the European Commission proposes an ambitious roadmap to scale-up hydrogen production and demand, e.g. installing 6 GW electrolyzers producing 1 mill. tons of renewable hydrogen by the end of 2024, scaling it up to 40 GW electrolyzers installed producing 10 mill. tons of renewable hydrogen by the end of 2030².

Whereas the importance of hydrogen in the energy transition but also in the decarbonization of other sectors to achieve the 2030 and 2050-targets is being recognized by a number of European initiatives and also European funding programmes e.g. ETS Innovation Fund and Next Generation EU and also the temporarily state aid instrument Important Project of Common European Interest (IPCEI), the current EEAG do not make any reference to hydrogen. Not only industrial stakeholders but also national governments are calling for a revision of EEAG to sufficiently reflect upon the need to stimulate the supply and demand of renewable hydrogen. Additionally also the European Commission on page 11 of the EU Hydrogen Strategy advocates, that the revision of the EEAG foreseen in 2021 should create an enabling framework to support decarbonization in particular making use of hydrogen.

Undertakings investing into the production of renewable hydrogen – produced from renewable electricity via electrolysis – are often faced by high OPEX-costs, in particular environmental taxes such as national surcharges and levies. This is for instance the case in Germany, where producers of renewable hydrogen are subject to EEG-surcharges. This makes the production of renewable hydrogen or higher processed products, e.g. Synthetic Natural Gas based on renewable hydrogen, rather unattractive and hinders the scaling-up of hydrogen to a commercial level. In order to reflect upon the role Power-to-Gas/X installation and renewable hydrogen can play in the energy transition, the EEAG should be amended by exempting producers of renewable hydrogen and renewable gases from environmental taxes and surcharges.

Additionally, the EEAG put low-carbon hydrogen – produced from natural gas and making use of CCS – in a more favorable position compared to renewable hydrogen/gas. National subsidies to CCS that are compatible with section 3.6 of EEAG, in particular to cover additional costs of capture, transport and storage of CO₂ emitted according to para. 165 EEAG, could put low-carbon hydrogen in an economical more favorable position than the production of renewable hydrogen/gas. The production

¹ See also below our comments on hydrogen.

² page 5 – 7 A hydrogen strategy for a climate-neutral Europe, 8.7.2020

of renewable and low-carbon hydrogen produced from natural gas making use of CCS should at least be on equal footing and the EEAG needs to be amended accordingly.

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?)

Tax exemptions of energy intensive industry should support investments into decarbonisation:

EU State Aid rules can play a role in supporting the decarbonisation of the industry by exempting energy intensive industries – investing into the decarbonisation – from environmental taxes. Rather than authorising such aid schemes for all energy intensive industries as it is the case according to section 3.7 EEAG, the rules should be amended to stimulate energy intensive industries investing into the avoidance of GHG emissions. This reflects upon the goals of the EU to become climate neutral by 2050 and could stimulate further development of sector-integration.

In general, the EU regulatory framework should safeguard a level playing field for market oriented solutions to cost-efficiently achieve policy targets to support European economic prosperity and environmental protection. However, new technologies and the energy transition are not always manageable by market forces only but need to receive public support based on an appropriate framework. Vattenfall wants to make fossil-free living possible within one generation and is investing into the energy transition by continuously moving out from CO₂ heavy production assets, while largely investing into renewable energy and decarbonisation of all sectors. EU state aid rules should particularly focus on incentivising Member States' instruments to achieve the EU energy and climate targets and to increase integration of different sectors, by e.g. limiting detailed requirements, taking regional and local specifications into consideration and incentivising the decarbonisation of the industry.

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.

In general, the EU regulatory framework should safeguard a level playing field for market oriented solutions to cost-efficiently achieve policy targets to support European economic prosperity and environmental protection. However, the energy transition and new technologies are not always manageable by market forces only but need to receive public support based on an appropriate framework.

A “green bonus” approach should allow Member States for substantially higher support for environmentally beneficial projects and thereby exempting Member States from specific notification to the European Commission or other requirements to avoid counterproductive delays. Moreover, investments to support and safeguard energy system integration and system stability and flexibility should be eligible within a “bonus” approach.

Corresponding to the challenging time horizon for investments to contribute to the European 2030 targets, the amount of requirements, criteria and bureaucracy should be reduced to the core minimum.

The set of criteria for environmentally beneficial activities, in particular in the field of energy, are already laid down in existing and regularly updated European directives, regulations and delegated acts as well as by the additional Member State’s requirements. Introducing further differentiation criteria could turn into an obstacle. The preconditions substantially differ between EU Member States e.g. in transformation electricity and heat generation to fossil free facilities by using an intermediate step from coal to gas to eventually make use of carbon neutral fuels. Therefore, Member States should be given increased flexibility to design the level and form of support within the already existing overarching principles in order to specifically meet the needs, sufficiently support the implementation of investments by increased predictability of the regulatory system and confidence of market participants.

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?”

As the EU taxonomy primarily addresses the financial sector, is still under development and having the challenging time horizon for implementing the European Green Deal in mind, introducing further criteria to the State Aid framework should be investigated in more detail to avoid unresponsive obstacles to achieving the 2030 and 2050-targets. As investments strategies focus on environmentally beneficial activities anyhow, the already existing criteria and requirements and the EU taxonomy criteria could lead to the same goal via different routes. Hence, there is no need to formally link the technical screening criteria laid down by the delegated regulation supplementing the EU Taxonomy Regulation and the revision of the EEAG and GBER.

Part 2: Antitrust Rules

1. Please provide **actual or theoretical examples** of desirable **cooperation between firms to support Green Deal objectives** that could not be implemented due to EU antitrust risks. In particular, please explain the circumstances in which cooperation rather than competition between firms leads to greener outcomes (e.g. greener products or production processes).

One such theoretical example could be cooperation between competitors aiming at reducing environmental damage in the production chain by agreeing to only procure products from “green-listed” suppliers that are pre-approved according to certain jointly agreed standards. Depending on the circumstances in each particular case, taking into account the full scope and design of the cooperation and its potential negative impact on competition in the relevant markets involved, such an agreement may risk running afoul of the EU competition rules.

Vattenfall therefore welcomes further clarification as to what extent environmental objectives, that are beneficial to society at large but may be difficult to quantify, should be taken into account when balancing the positive effects of a cooperation agreement (such as the one described above) against its potential negative effects on competition and the welfare of consumers in more traditional terms.

2. Should further clarifications and comfort be given on the characteristics of agreements that serve the objectives of the Green Deal without restricting competition? If so, in which form should such clarifications be given (general policy guidelines, case-by-case assessment, communication on enforcement priorities...)?

Yes, we do see a need for further clarifications for this type of agreements (as stated above) but have no particular preference on the form in which such clarifications should be given.

3. Are there circumstances in which the pursuit of **Green Deal objectives would justify restrictive agreements** beyond the current enforcement practice? If so, please explain how the current enforcement practice could be developed to accommodate such agreements (i.e. which Green Deal objectives would warrant a specific treatment of restrictive agreements? How can the pursuit of Green Deal objectives be differentiated from other important policy objectives such as job creation or other social objectives?).

No comments in addition to the general statements above.

Part 3: Merger Control

1. Do you see any situations when a merger between firms could be harmful to consumers by reducing their choice of environmentally friendly products and/or technologies?

No comments.

2. Do you consider that merger enforcement could better contribute to protecting the environment and the sustainability objectives of the Green Deal? If so, please explain how?

No comments.

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