PART III.6.K - Supplementary information sheet for State aid granted under the Guidelines on State aid for climate, environmental protection and energy 2022 (hereafter ‘CEEAG’) - Section 4.9 – Aid for energy infrastructure

*This supplementary information sheet concerns measures covered in Section 4.9 of the CEEAG. If the notification includes measures that are covered by more than one section of the CEEAG, please once available also fill in the respective supplementary information sheet that concerns the respective section of the CEEAG.*

*All documents provided by Member States as annexes to this supplementary information sheet must be numbered and document numbers must be indicated in the relevant sections of this supplementary information sheet.*

Section A: Summary of the main characteristics of the notified measure(s)

1. Background and objective(s) of the notified measure(s).

1.1. If not already discussed under section 5.2 of the General Information Form (Part. I), please provide the background and the main objective, including any Union targets for reduction and removal of greenhouse gas emissions that the measure is intended to support.

1.2. Please indicate any other objectives pursued by the measure. For any objectives that are not purely environmental, please explain whether they may result in any distortions to the internal market.

2. Entry into force and duration:

2.1. To the extent not already provided under section 5.4 of the General Information Form (Part I), please indicate the date as of which the measure is planned to enter into force;

2.2. If the measure concerns an aid scheme, please indicate its duration.[[1]](#footnote-1)

3. Beneficiary(ies)

3.1. If not already provided under section 3 of the General Information Form (Part I), please describe the (potential) beneficiary(ies) of the measure(s).

3.2. Please indicate the location of the (potential) beneficiary(ies) (i.e. if only economic entities located in the respective Member States or also in other Member States are eligible to participate in the measure).

3.3. In order to assess the compliance with point 15 of the CEEAG, please specify if individual aid is granted under the measure(s) in favour of an undertaking (as part of a scheme or not) that is subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market.

In the affirmative, please provide information on the amount of aid still to be recovered so that the Commission takes account of it in the assessment of the aid measure(s).

3.4. Please confirm that the measure(s) does not involve aid to activities falling outside the scope of application of the CEEAG (see point 13 of the CEEAG). Otherwise, please provide details.

Points 373 and 374 of the CEEAG provide that “*support to energy infrastructure within the framework of a legal monopoly is not subject to State aid rules”.* This could be the case where the construction and operation of certain infrastructures is exclusively reserved by law for the TSO or DSO*.* Similarly, point 375 CEEAG provides that “*the Commission considers that there is no State aid involved in investments where the energy infrastructure is run under a ‘natural monopoly’*”.

Is the project notified within the framework of a legal monopoly or is it run under a “natural monopoly”?

3.5. If the answer to the previous question is Yes, please explain why the notified project falls within the framework of a legal and/or natural monopoly, with reference to each cumulative criterion laid down in point 374 for legal monopolies and/or in point 375 for natural monopolies of the CEEAG.

4. Budget and financing of the measure(s).

4.1. If not already mentioned in the table under section 7.1 of the General Information Form (Part I), please provide the yearly and/or total budget for the whole duration of the measure(s); if the total budget is not known (for instance because it depends on the results of tenders), please indicate an estimated budget, including the assumptions used to calculate the respective estimated budget.[[2]](#footnote-2)

4.2. If the measure is financed through a levy, please clarify if:

(a) the levy is set by law or any other legislative act; in the affirmative, please provide the legal act, number and date when adopted and entered into force, the internet link to the legal act;

(b) the levy is imposed equally on domestic and imported products;

(c) the notified measure will benefit equally domestic and imported products;

(d) the levy finances fully the measure or only partly. If the levy finances only partly the measure, indicate the other sources of financing of the measure and their respective proportion;

(e) the levy financing the notified measure also finances other aid measures. If so, indicate the other aid measures financed by the concerned levy.

Section B: Compatibility assessment of the aid

1. Positive condition: the aid must facilitate the development of an economic activity

1.1. Contribution to the development of an economic activity

*To provide the information in this section, please refer to section 3.1.1 (points 23-25) and sections 4.9.1 and 4.9.2 of the CEEAG.*

5. Article 107(3), point (c), of the Treaty on the Functioning of the European Union (’the Treaty’) provides that the Commission may declare compatible ‘aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest’. Therefore, compatible aid under that provision of the Treaty must contribute to the development of certain economic activity.

In order to assess the compliance with point 23 of the CEEAG, please identify the economic activities that will be facilitated as a result of the aid and how the development of those activities is supported.

6. In order to assess the compliance with point 25 of the CEEAG, please “describe if and how the aid will contribute to the achievement of objectives of Union climate policy, environmental policy and energy policy and more specifically, the expected benefits of the aid in terms of its material contribution to environmental protection, including climate change mitigation, or the efficient functioning of the internal energy market”.

7. In addition, please highlight to what extent the aid relates to policies described under points 371 and 372 CEEAG.

8. Please provide information on the scope and supported activities of the aid measure(s), as provided in point 376 CEEAG. By doing so, please also:

(a) Ensure that the project is about an energy infrastructure as defined under point 19(36) of the CEEAG.

(b) Ensure that the project does not involve dedicated infrastructure and/or other energy infrastructure combined with production and/or consumption activities.

(c) Specify what type of costs will be supported by the measure: investment or operating costs.

(d) In case where the measure will cover operating costs, demonstrate that those costs cannot be recovered from network users and that they are not related to sunk costs, and that the operating aid leads to a change in behaviour that enables the delivery of security of supply or environmental protection objectives.

1.2. Incentive effect

*To provide the information in this section, please refer to section 3.1.2 (points 26-32) of the CEEAG.*

9. Aid can be considered as facilitating an economic activity only if it has an incentive effect. In order to assess the compliance with point 26 of the CEEAG, please explain how the measure(s) “*induces the beneficiary to change its behaviour, to engage in additional economic activity or in more environmentally-friendly economic activity, which it would not carry out without the aid or would carry out in a restricted or different manner”.*

10. In order to assess the compliance with point 27 of the CEEAG, please provide information to confirm that the aid does not support the costs of an activity that the aid beneficiary would anyhow carry out and does not compensate for the normal business risk of an economic activity[[3]](#footnote-3)*.*

11. In order to demonstrate the presence of an incentive effect, point 28 of the CEEAG requires the identification of the factual scenario and the likely counterfactual scenario in the absence of aid. For aid to energy infrastructure, as explained in point 52, the counterfactual scenario is presumed to be the situation in which the project would not take place.

(a) Please provide a comprehensive description of the factual scenario. In case of schemes covering different reference projects[[4]](#footnote-4), please provide a description of the factual scenario for each reference project.

(b) In as far as the measure is not an aid scheme, please attach to this notification form any official board documents, risk assessments, financial report, internal business plans, expert opinions and other studies related to the project under assessment, documents containing information on demand forecasts, costs forecasts, financial forecasts, documents submitted to an investment committee and that elaborate on investment/operation scenarios, or documents provided to the financial institutions as provided in point 28, footnote 39 of the CEEAG.

Please note that those documents need to be contemporary to the decision-making process concerning the investment/operation decision.

If such documents are attached to the notification form, please provide below a list of those documents, specifying the author, the date when they were drafted and the context when they were used.

12. In order to demonstrate the compliance with points 29 and 31 of the CEEAG:

(a) Please confirm that the start of works on the project or activity did not take place prior to a written aid application by the beneficiary to the national authorities;

*OR*

(b) For projects that started before the aid application, please demonstrate that the project falls within one of the exceptional cases provided in point 31 of the CEEAG ((a), (b) or (c)).

13. In order to demonstrate compliance with point 30 of the CEEAG, please confirm that the aid application includes at least the applicant’s name, a description of the project or activity, including its location, and the amount of aid needed to carry it out.

14. In order to demonstrate compliance with point 32 of the CEEAG, please indicate if there are Union standards[[5]](#footnote-5) applicable to the notified measure(s), mandatory national standards that are more stringent or ambitious than the corresponding Union standards, or mandatory national standards adopted in the absence of Union standards. In that context, please provide information to demonstrate the incentive effect.

15. In cases where the relevant Union standard has already been adopted but is not yet in force, please demonstrate that the aid has an incentive effect because it incentivises the investment to be implemented and finalised at least 18 months before the standard enters into force.

1.3. No breach of any relevant provision of Union law

*To provide the information in this section, please refer to section 3.1.3 (point 33 of the CEEAG).*

16. Please provide information to confirm the compliance with the relevant provisions of EU law, in line with point 33 of the CEEAG.

17. If a levy is used to finance the measure(s), please clarify if the assessment of compliance with Articles 30 and 110 of the Treaty needs to be carried out. In the affirmative, please demonstrate how the measure complies with the provisions of Articles 30 and 110 of the Treaty.In this context, the information submitted under question 4.2. above, where the notified measure(s) is financed through a levy can be referred to.

2. Negative condition: the aid cannot unduly affect trading conditions to an extent contrary to the common interest

2.1. Minimisation of distortions of competition and trade

2.1.1. The necessity and the appropriateness of State aid intervention

*To provide the information in this section, please refer to section 4.9.3.1 (points 379 and 380) of the CEEAG.*

18. Point 379 of the CEEAG provides that, regarding energy infrastructure, market failures are usually addressed/financed by means of compulsory user tariffs subject to regulation. Nevertheless, as point 380 of the CEEAG mentioned, this may not always be the case. Please explain to what extent the measure addresses market failures that cannot be addressed by means of compulsory user tariffs.

19. In order to demonstrate the necessity and the appropriateness of the State aid, please specify under which of the different situations the notified project has to be assessed:

(a) The project notified is a project of common interest as defined in Article 2, point (4) of Regulation (EU) No 347/2013, which are fully subjected to internal energy market legislation. In that situation, the Commission considers that there is a presumption of market failure. There is no need for the Member State to justify further the need and the appropriateness of the State aid, or

(b) the project notified is not a project of common interest as defined above or is a project of common interest but is partially or fully exempted from internal energy market legislation, or

(c) the project is not a project of common interest and is between the Union and a third country.

20. If the notified project falls within the situation mentioned in point 19(b) above, in order to justify the necessity and the appropriateness of the measure, please explain to what extent:

* the market failure leads to a sub-optimal provision of the necessary infrastructure;
* the infrastructure is open to third party access and subject to tariff regulation;
* the project contributes to the security of supply in the Union or to climate neutrality objectives to the Union.

21. If the project is in the situation mentioned in point 19©, please explain if (i) for the part of the infrastructure located on Union territory, the project is built and operated in line with Union legislation, particularly Directives 2009/73/EC and (EU) 2019/944, and (ii) for the part located in third country or countries involved, the project has a high level of regulatory alignment and supports the overall objectives of the Union, in particular to ensure:

* a well-functioning internal energy market,
* security of energy supply based on cooperation and solidarity,
* an energy system on a trajectory towards decarbonisation in line with the Paris Agreement and the Union’s climate objectives, and in particular
* avoidance of carbon leakage.

2.1.2. The proportionality of the aid

*To provide the information in this section, please refer to points 51-52 and 381 of the CEEAG*.

22. Pursuant to point 51 of the CEEAG, the typical net extra costs can be estimated as the difference between the NPV for the factual scenario and the counterfactual scenario over the lifetime of the project or per reference project where applicable. Where the counterfactual scenario is that the project will not be implemented (see point 52 of the CEEAG), the negative NPV of the factual scenario is equal to the net extra costs.

Please provide the following in an Annex to this notification form (using an Excel file where all formulas are visible):

(a) In order to determine the funding gap[[6]](#footnote-6), please submit a quantification, for the factual scenario, of:

1. all main costs and revenues of the project;
2. the estimated weighted average cost of capital (WACC) of the beneficiaries to discount future cash flows;
3. net present value (NPV) for the factual scenario, over the lifetime of the project.

(b) Please include in an Annex to this notification form detailed information on the assumptions, methodologies, rationale and underlying sources thereof, used for each aspect of the quantification of costs and revenues in the factual scenario (for instance please include the assumptions used to develop the factual scenario)

23. Pursuant to point 53 of the CEEAG, for cases of individual aid and schemes benefitting a particularly limited number of beneficiaries, the Member State needs to present the supporting evidence at the level of the detailed project business plan.

For cases of aid schemes, the Member State needs to present the supporting evidence on the basis of one or more reference projects.

24. In order to allow the Commission to verify that the aid amount does not exceed the minimum necessary for the aided project to be sufficiently profitable[[7]](#footnote-7), please provide the following information:

(a) The internal rate of return (IRR) corresponding to the sector or firm specific benchmark or hurdle rate; or

(b) The normal rates of return required by the beneficiary in other investment projects of a similar kind, its cost of capital as a whole; or

(c) The returns commonly observed in the industry concerned; or

(d) Any other information justifying that the aid amount does not exceed the minimum necessary for the aided project to be sufficiently profitable.

25. Pursuant to point 381 of the CEEAG, if the aid is close to the maximum allowed and where there is a risk of windfall profits, a monitoring and claw-back mechanism may be necessary, while keeping incentives for the beneficiaries to minimise their costs and develop their business in a more efficient manner over time. Please explain if there is any monitoring and claw-back mechanism in place. If not, please explain why.

2.1.3. Cumulation

*To provide the information in this section, please refer to points 56-57 of the CEEAG.*

26. In so far as not already provided under section 7.4 of the General Information Form (Part I), and in order to verify compliance with point 56 of the CEEAG, please clarify if the aid under the notified measure(s) may be awarded concurrently under several aid schemes or cumulated with ad hoc or *de minimis* aid in relation to the same eligible costs. If that is the case, please provide details on those aid schemes, ad hoc aid or *de minimis* aid and how the aid will be cumulated. Please note that you may wish to refer to the quantification provided above.

27. If aid is awarded concurrently under several aid schemes or cumulated with ad hoc or de minimis aid in relation to the same eligible costs, please justify how the total amount of aid granted under the notified measure(s) for a project or an activity does not lead to overcompensation or exceed the maximum aid amount allowed under points 51 and 381 of the CEEAG. Please specify, for each measure, that the aid granted under the notified aid measure(s) can be cumulated, the method used for ensuring compliance with the conditions set out in point 56 of the CEEAG.

28. If the aid granted under the notified measure(s) is combined with centrally managed Union funding pursuant to point 57 of the CEEAG[[8]](#footnote-8), please justify how the total amount of public funding granted in relation to the same eligible costs does not lead to overcompensation.

2.1.4. Transparency

*To provide the information in this section, please refer to section 3.2.1.4 (points 58-62) of the CEEAG.*

29. Please confirm that the Member State will comply with the requirements on transparency provided in points 58-61 of the CEEAG.

30. Please provide the internet link where the full text of the approved aid scheme or the individual aid granting decision and its implementing provisions, and information on each individual aid award granted ad hoc or under an aid scheme approved on the basis of the CEEAG and exceeding EUR 100 000 will be published.

2.2. Avoidance of undue negative effects of the aid on competition and trade and balancing

*To provide the information in this section, please refer to section 4.9.4. (points 382 et seq. of the CEEAG)*.

31. If the project notified is exempted, in whole or in part, from internal energy market legislation, please explain:

* To what degree the aided infrastructure is open to third party access;
* To what degree customers can have access to alternative infrastructure, if any;
* To what degree the project could result in crowding-out of private investments;
* The competitive position of the beneficiary(ies), both as regards the operation of infrastructure and as regards relevant product markets for the good transported with the infrastructure.

32. If the project notified is a natural gas infrastructure,please provide information on how the notified project will fulfil the following conditions:

* The infrastructure is ready for the use of hydrogen and leads to increase the use of renewable gases; or alternatively, the reason why it is not possible to design the project so that it is ready for the of hydrogen and how the project does not create a lock-in effect for the use of natural gas;
* The investment contributes to achieving the Union’s 2030 climate targets and 2050 climate neutrality target.

33. If the project notified is a Project of Common Interest or Project of Mutual Interest not subject to internal market legislation**,** please explain what the impact of the project will be on related services markets as well as on other services markets.

Section C: Evaluation

*To provide the information in this section, please refer to point 76(a) and Section 5 (points 455-463) of the CEEAG.*

34. If the notified measure(s) exceed the budget/expenditure thresholds in point 456 of the CEEAG, please either explain why in your view the exception in point 457 of the CEEAG should apply, or attach to this notification form an Annex that includes a draft evaluation plan covering the scope mentioned in point 458 of the CEEAG.[[9]](#footnote-9)

35. If a draft evaluation plan is provided, please:

(a) provide below a summary of that draft evaluation plan included in the Annex.

(b) confirm that point 460 of the CEEAG will be respected.

(c) provide the date and internet link where the evaluation plan will be publicly available.

36. In order to verify the compliance with point 459(b) of the CEEAG, in case the aid scheme is not currently subject to an *ex post* evaluation, and its duration exceeds three years, please confirm that you will notify a draft evaluation plan within 30 working days following a significant modification increasing the budget of the scheme to over EUR 150 million in any given year or EUR 750 million over the total duration of the scheme.

37. In order to verify the compliance with point 459(c) of the CEEAG, in case the aid scheme is not currently subject to an *ex post* evaluation, please provide below a commitment that the Member State will notify a draft evaluation plan within 30 working days after recording in official accounts expenditures in excess of EUR 150 million in the previous year.

38. In order to verify the compliance with point 461 of the CEEAG:

(a) Please clarify if the independent expert has already been selected or it will be selected in the future.

(b) Please provide information on the selection procedure of the expert.

(c) Please justify how the expert is independent from the granting authority.

39. In order to verify the compliance with point 461 of the CEEAG:

(a) Please provide your proposed deadlines for the submission of the interim and final evaluation report. Please note that final evaluation report must be submitted to the Commission in due time to allow for the assessment of the possible prolongation of the aid scheme and at the latest 9 months before its expiry, in line with point 463 of the CEEAG. Please note that that deadline could be reduced for schemes triggering the evaluation requirement in their last 2 years of implementation.

(b) Please confirm that the interim and final evaluation report will be made public. Please provide the date and internet link where those reports will be publicly available.

Section D: Reporting and monitoring

*To provide the information in this section, please refer to Section 6 (points 464-465) of the CEEAG.*

40. Please confirm that the Member State will comply with the requirements for reporting and monitoring provided in Section 6, points 464 and 465, of the CEEAG.

1. Please note that for an aid scheme, the duration is the period during which aid may be applied for and decided upon (including thus the time needed for the national authorities to approve the aid applications). The duration referred to under this question does not relate to the duration of the contracts concluded under the aid scheme, which may continue beyond the duration of the measure. [↑](#footnote-ref-1)
2. Please note that a change to the actual or estimated budget may be an alteration of aid, requiring a new notification. [↑](#footnote-ref-2)
3. See judgment of the Court of Justice of 13 June 2013, *HGA and others* v *Commission*, C-630/11 P to C-633/11 P, ECLI:EU:C:2013:387, paragraph 104. [↑](#footnote-ref-3)
4. According to point 19(63) CEEAG, ‘reference project’ means an example project that is representative of the average project in a category of eligible beneficiaries for an aid scheme. [↑](#footnote-ref-4)
5. According to point 19(89) of the CEEAG, ‘Union standard’ means:

   *a mandatory Union standard setting the levels to be attained in environmental terms by individual undertakings, excluding standards or targets set at Union level which are binding for Member States but not for individual undertakings;*

   *the obligation to use the best available techniques (BAT), as defined in Directive 2010/75/EU, and to ensure that emission levels do not exceed those that would be achieved when applying BAT; where emission levels associated with the BAT have been defined in implementing acts adopted under Directive 2010/75/EU or under other applicable directives, those levels will be applicable for the purpose of these guidelines; where those levels are expressed as a range, the limit for which the BAT is first achieved for the undertaking concerned will be applicable.* [↑](#footnote-ref-5)
6. Point 51 of the CEEAG provides that the *“typical net extra cost can be estimated as the difference between the NPV for the factual scenario and for the counterfactual scenario over the lifetime of the reference project.”* [↑](#footnote-ref-6)
7. According to footnote 46 of the CEEAG, please note that *“all relevant expected costs and benefits must be considered over the lifetime of the project”.* [↑](#footnote-ref-7)
8. Centrally managed union funding is Union funding centrally managed by the institutions, agencies, joint undertakings or other bodies of the European Union that is not directly or indirectly under the control of the Member State. [↑](#footnote-ref-8)
9. The template for the supplementary information sheet for the notification of an evaluation plan (Part III.8) is accessible here: <https://competition-policy.ec.europa.eu/state-aid/legislation/forms-notifications-and-reporting_en#evaluation-plan> [↑](#footnote-ref-9)