

Comments of the Czech Republic on the draft of the Communication from the Commission – Guidelines on State aid for climate, environmental protection and energy 2022 – public consultation

General comments

The Czech Republic considers it essential that the freedom of Member States to choose their own energy mix will be preserved.

We consider it important that the *CEEAG be linked in time to the current GBER regulation*. The relevant provisions of the GBER Regulation are widely used in the field of environmental protection and without updating them from the point of view of the new EC approach in this area expressed in the CEEAG proposal, the possibility of providing aid under the GBER would be considerably more difficult.

In view of the need for a *public consultation* on the main features of the proposed scheme, we are of the opinion that this procedure will represent a disproportionate administrative burden on aid providers and, as a result, will lead to delays in proceedings and possible start of aid.

The Czech Republic disagrees *to lower the transparency threshold* to EUR 100 000 and we propose to keep the general limit of EUR 500 000. The newly proposed limit of EUR 100 000 is even lower than the amount of de minimis aid, which is not subject to compulsory registration in a similar central register in the EU.

We propose to increase the aid intensity for clean mobility so as to provide sufficient incentives for the development of the sector. Furthermore, we believe that in the vast majority of cases, this infrastructure is local in nature and the need for an ex-ante public consultation is thus redundant.

Weighing the positive effects of the aid against the negative effects on competition and trade

The Czech Republic strongly disagrees with linking balancing exercise under CEEAG regime to Regulation (EU) 2020/852¹ (EU Taxonomy). The EU taxonomy is targeting private investments; therefore, the Czech Republic does not see technical screening criteria developed within Taxonomy Regulation framework as fit for purpose for conducting balancing exercise in case of the State aid regime. State aid is defined as *“an advantage given by a government that may provide a company with an unfair competitive edge over its commercial rivals. Such State aid can be delivered in a variety of ways, such as through the allocation of grant subsidies, the provision of interest and tax relief, or the purchasing of goods and services on preferential terms.”*² **Thus, State aid concerns state-owned resources and not private investment** and as Valdis Dombrovskis, Executive Vice-President for an Economy that Works for People, said: *“Europe was an early leader in reforming the financial system to support investments for climate change. Today, we are taking a leap forward with the first-ever climate taxonomy which will help companies and investors to know whether their investments and activities*

¹ Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088

² https://ec.europa.eu/regional_policy/en/policy/what/glossary/s/state-aid

*are really green. This will be essential if we are to mobilize private investment in sustainable activities and make Europe climate-neutral by 2050.”*³

In light of the abovementioned, EU Member States (MSs) should be free to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply in line with the Art. 194 of the TFEU⁴. This should be done in **cost-effective manner as outlined in the introduction of the CEEAG and holistic approach** should be streamlined. **European Commission should choose methodology for balancing exercise in a transparent and unbiased manner.**

We would also like to highlight that medium-term and long-term climate targets enshrined under the European Climate Law are Union-wide. Regulation (EU) 2018/842⁵ (Effort Sharing Regulation) recognizes **common but differentiated responsibilities** in terms of greenhouse gases (GHG) reductions of the EU MSs. **Thus, state aid for certain (transitory) activities using fossil fuels that provide an immediate reduction of GHG emissions, should be evaluated taking into account geographical and climatic conditions, economic possibilities of the MSs and expected future development of individual technologies in technology neutral manner.**

SCOPE AND DEFINITIONS - 2.4 Definitions

1. point 2.4 (28)

Suggested change:

(28) ‘district heating’ or ‘district cooling’ means district heating or district cooling as defined in Article 2, point (19), of Directive (EU) ~~2010/31~~ **2018/2001** of the European Parliament and of the Council;

Justification:

Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources provides a more precise definition of district heating in Article 2 (19), which we recommend to be respected.

2. point 2.4 (29)

Suggested change:

(29) ‘district heating and cooling systems’, consisting of heat generation facilities (heating/cooling production plants **including combined heat and power plants**), the heating/cooling storage and distribution network (both ‘primary’- or transmission- and ‘secondary’ network of pipelines to supply heat to consumers). Reference to district heating is to be interpreted as district heating and/or cooling systems, depending on whether the networks supply heat or cooling jointly or separately;

Justification:

³ https://ec.europa.eu/commission/presscorner/detail/en/ip_21_1804

⁴ <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12008E194:EN:HTML>

⁵ Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013

It should be clarified that also combined heat and power plants can be part of the district heating system. Original definition could be understood as referring only to heat plants.

3. point 2.4 (34)

Suggested change:

(34) 'energy from renewable sources' means energy produced by plants using only renewable energy sources as defined in Article 2, point (1), of Directive (EU) 2018/2001 of the European Parliament and of the Council³¹, ~~as well as the share in terms of calorific value of energy produced from renewable energy sources in hybrid plants which also use conventional energy sources and includes renewable electricity used for filling storage systems connected behind the meter (jointly installed or as an add-on to the renewable installation), but excludes electricity produced as a result of storage systems;~~

Justification:

We recommend not to extend this fundamental definition beyond the scope of Directive 2018/2001, as it might cause confusion.

4. point 2.4. (35) (a) (iv)

We welcome and support the definition of smart electricity grids.

5. point 2.4 (35) (e)

Suggested change:

(35) 'energy infrastructure' means any physical equipment or facility which is located within the Union or linking the Union to one or more third countries and falling under the following categories:

(e) infrastructure used for transmission or distribution of ~~heat /steam/cooling~~ **thermal energy in the form of steam, hot water or chilled liquids** from multiple producers/users, ~~based on use of zero/low carbon heat/steam or waste heat from industrial applications;~~

Justification:

The definition should be based on thermal energy which can be in various forms. In case of third-party access to the operator of the infrastructure, no limitation can be required regarding origin of heat. Since the Commission included gas infrastructure dedicated to transport of fossil fuel and electricity infrastructure which is also used for transportation of electricity from fossil fuels we do not see any reason for discrimination against district heating.

6. point 2.4 new subparagraph (80)

Suggested change:

New definition of 'waste heat or cold' should be added in new point (80) after current point (79):

(80) "waste heat or cold" mean waste heat or cold as defined in art. 2 point 9 in Directive 2018/2001 of the European Parliament and the Council of the EU.

Current point (80) should be renumbered as (81).

Justification:

Definition of waste heat and cold is provided by Article 2, point (9) of Directive (EU) 2018/2001 of the European Parliament and of the Council:

‘waste heat and cold’ means unavoidable heat or cold generated as by-product in industrial or power generation installations, or in the tertiary sector, which would be dissipated unused in air or water without access to a district heating or cooling system, where a cogeneration process has been used or will be used or where cogeneration is not feasible;

As the term ‘waste heat’ is used in section 4.10 (see paragraph 342) the definition should be added to avoid misunderstandings and provide clear distinction of ‘waste heat’ from waste.

Section 3.2.1.3, point 49.

7. Although we do not want to argue that the main criterion in the competitive project selection process should be the required amount of subsidy, we are of the opinion that it is not desirable for other criteria to have a weight of only 25%, at least in support of infrastructure development.

In such a case, these other criteria will have only a minimal incentive effect. This is, inter alia, somewhat contrary to paragraph 179, which states that there should be a sufficiently incentive mechanism in the competitive project selection process to support projects based exclusively on the use of fuels from renewable energy sources. In our opinion, a criterion with a weight of max. 25% cannot be such a mechanism. We would therefore welcome the possibility that these additional criteria could weigh up to 40%.

Section 4.1 Aid for the reduction and removal of greenhouse gas emissions including through support for renewable energy

General comment

8. In section 4.1. we recommend to include the possibility of an alternative scenario for aid in production technologies.

Justification: these are often technically the same projects as in section 4.5 and the choices of the section are governed by the predominant effect, see paragraph 228 (reduction of CO₂ or pollutant emissions). Therefore, similar conditions for support should be allowed. At the same time, we ask for an explanation of how to evaluate the prevailing effect, what criteria to use for this evaluation. The impact of a similar reduction in tonnes or percentages of CO₂ and pollutant emissions is incomparable in terms of effect on, for example, human health.

Public consultation

9. We argue for amendment of paragraph (86) in a following way:

“No public consultation is required for measures falling under point 85(b) where competitive bidding processes are used.”

Rationale behind the proposal for the amendment of the paragraph (86) is that a paragraph (110) already stipulates that **“Member States must explain how they will ensure that the investment [in energy or industrial production based on natural gas] contributes to achieving the Union’s 2030 climate target and 2050 climate neutrality target. In particular, the Member States should explain how a lock in of this gas-fired energy generation or gas-fired production equipment will be avoided.”** Therefore, we do not see why this extra administrative burden (resulting in unreasonable administrative costs) should be put in place for gas-fired energy generation or gas-fired production equipment (as State aid for most polluting fossil fuels such as coal, diesel, lignite, oil, peat and oil shale have negative effects on competition and trade that is unlikely to be offset) under paragraph 85(b).

10. Section 4.1.2, point 77.

Suggested change:

(77). Indirect land-use change (ILUC) occurs when the cultivation of crops for biofuels, bioliquids and biomass fuels displaces production of crops for food and feed purposes. Such additional demand increases the pressure on land and can lead to the extension of agricultural land into areas with high-carbon stock, such as forests, wetlands and peatland, causing additional greenhouse gas emissions. This is why Directive (EU) 2018/2001 limits food and feed crops-based biofuels, bioliquids and biomass fuels **in transport**. The Commission considers that certain aid measures can aggravate indirect negative externalities. The Commission will therefore, in principle, consider that support for biofuels, bioliquids, biogas and biomass fuels **produced from food and feed crops and used in transport** exceeding the caps defining their eligibility for the calculation of the gross final consumption of energy from renewable sources in the Member State concerned in accordance with Article 26 of that Directive, do not produce positive effects which outweigh the negative effects of the measure. Furthermore, the Commission will verify whether Member States took into account in the design of their support mechanisms the need to avoid distortions on the raw material markets from biomass support, in particular for forest biomass.

Justification:

Article 26 of the Directive (EU) 2018/2001 applies only to biofuels, bioliquids and biomass fuels produced from food and feed crops and consumed in transport. Therefore, it should be clarified that paragraph 77 also applies only to biofuels, bioliquids and biomass fuels produced from food and feed crops and consumed in transport.

11. Section 4.1.3.4, point 85.

Suggested change:

(85). Prior to the notification of aid, other than in duly justified exceptional circumstances, Member States must consult publicly on measures to be notified under this Section. The obligation to consult does not apply in respect of amendments to already approved measures that do not alter their scope or eligibility, and the cases referred to in point 86. To determine whether a measure is justified, bearing in mind the criteria in these guidelines, the following public consultation is required:

(a) for measures where the estimated average annual aid to be granted is \geq EUR 150 million per year, a public consultation of at least **8 4** weeks' duration, covering:

- (i) eligibility;
- (ii) method and estimate of subsidy per tonne of CO₂ equivalent emissions avoided (per reference project);
- (iii) proposed use and scope of competitive bidding processes and any proposed exceptions;
- (iv) main parameters for the aid allocation process⁵⁷ including for enabling competition between different types of beneficiary⁵⁸;
- (v) main assumptions informing the quantification used to demonstrate the incentive effect, necessity and proportionality;
- (vi) where new investments in natural gas based generation or industrial production may be supported, proposed safeguards to ensure compatibility with the Union's climate targets (see point 110).

(b) for measures where the estimated average annual aid to be granted is $<$ EUR 150 million per year, a public consultation of at least **4 2** weeks' duration, covering:

- (i) eligibility;
- (ii) proposed use and scope of competitive bidding processes and any proposed exceptions;
- (iii) here new investments in natural gas based generation or industrial production may be supported, proposed safeguards to ensure compatibility with the Union's climate targets (see point 110).

Justification:

The deadlines for public consultation (Chapter 4.1.3.4) are too long. These time requirements for public consultation will lead to delays in the application of the aids and thus against an accelerated process of applying energy decarbonisation measures. Suggested deadlines are also against the process of simplification of administrative and permitting processes in the implementation of energy production from RES according to Articles 15 to 17 of Directive 2018/2001. We therefore propose to shorten the deadlines in Article 85 at least by half.

12. Section 4.1.3.5, point 89.

Suggested change:

(89). Aid **Operating aid** for reducing greenhouse gas emissions should in general be granted through a competitive bidding process as described in points 48 and 49, **in the case of electricity generation**.

Justification:

Competitive tendering should only apply to operating aid that can have more distortive effect on the market – see also points (103) and (104). In the case of investment aid, it can be difficult to verify

whether greenhouse gas emission reductions have actually been achieved, which can lead to false offers.

Furthermore, the amount of support should generally be provided through competitive tenders in the field of electricity support, as electricity is provided by the national and European interconnected electricity market. However, competitive tenders do not make sense in the case of heat and cold or gas projects, which are usually local projects, including cases of support for increasing the energy efficiency of production processes.

13. Section 4.1.3.5, point 92.

(92). Exceptions from the requirement to allocate aid and determine the aid level through a competitive bidding process can be justified where evidence, including that gathered in the public consultation, is provided that one of the following applies:

(a) there is insufficient potential supply to ensure competition; in that case, the Member State must demonstrate that it is not possible to increase competition by reducing the budget or expanding the eligibility of the scheme;

(b) beneficiaries are small projects, defined as follows:

(i) for electricity generation or storage projects – projects below the threshold ~~in Article 5 of Regulation (EU) 2019/943~~ **1 MW threshold**;

(ii) for electricity consumption – projects with a maximum demand less than ~~400 kW~~ **500 kW**;

~~(iii) for heat generation and gas production technologies – projects below 400kW installed capacity.~~

(c) where level of aid granted to some installations affects price of input to other installations (e.g. electricity produced from biomass).

Justification:

The amount of support should generally be provided through competitive tenders in the field of electricity support, as electricity is provided by the national and European interconnected electricity market. However, competitive tenders do not make sense in the case of projects for heat and cold or gas, where they are usually projects of a local nature. We therefore recommend maintaining the possibility of setting the amount of support through green bonuses set by the so-called “officially set price”. This applies also for small and medium-sized electricity generation, where the implementation of support through competitive tenders may put smaller production at a competitive disadvantage. The power value of 200 kW for the electricity generation for case (i) and the power value of 400 kW for the electricity consumption for case (ii) are very low. For the above reasons, we therefore propose to provide an exemption for determining the amount of support through a competitive tender only for projects in the field of electricity generation, and to unify the output for all electricity generation with an output over 1 MW.

When supporting a facility using biomass, the most important parameter is the input price of biomass. Biomass resources are usually limited, so more facilities are being built, the demand for biomass is

growing and so is its price. Aid granted to facilities built later in a competitive bidding process could distort the market for facilities built earlier.

14. Section 4.1.4, point 99.

Suggested change:

(99). To deliver positive environmental effects in relation to decarbonisation, the aid must not merely displace the emissions from one sector to another and must deliver overall greenhouse gas emissions reductions. ~~Short and long term interactions with any other relevant policies or measures, including the Union's ETS, should be considered.~~

Justification:

Market Stability Reserve (MSR) in the Union's ETS effectively eliminates effects of aid provided to installations in ETS on price of allowances. The Commission already suggested that MSR will be further strengthened in the framework of the Fit for 55 legislative package. There is therefore no need to take into account for example effects of aid provided to installations in ETS on market price of allowances. The term 'interactions with other relevant policies or measures' is vague and the first sentence captures the idea well. We therefore suggest that the second sentence is deleted.

15. Section 4.1.4, point 107.

Suggested change:

According to our opinion point 107 should be deleted or changed as suggested below:

(107). To avoid undermining the objective of the measure or other Union environmental protection objectives, incentives must not be provided for the generation of ~~energy~~ **electricity** that would displace less polluting ~~forms of energy~~ **generation of electricity**. For example, where cogeneration based on non-renewable sources is supported, ~~or where biomass is supported,~~ they must not receive incentives to generate electricity ~~or heat~~ at times when this would mean ~~zero air pollution~~ renewable energy sources would be curtailed.

Justification:

The article should tackle only electricity which is difficult to be stored and used later. Other forms of energy enable energy storage which deals with the issue. In district heating systems also security of supply needs to be considered as these systems are typically small and not interconnected. As far as electricity is concerned the Guidelines should respect directly applicable Regulation (EU) 2019/943 of the European Parliament and of the Council on the internal market for electricity which sets in article 12 clear rules for dispatching of power-generating facilities. There is therefore nothing new the Guidelines could require and hence the most practicable solution would be to delete point 107. If this is not accepted, point 107 should at least be amended as suggested.

16. Section 4.1.4, point 110.

Suggested change:

(110). Similarly, measures that incentivise new investments in energy or industrial production based on natural gas may reduce greenhouse gas emissions and other pollutants in the short term but aggravate negative environmental externalities in the longer term, compared to alternative investments. For investments in natural gas to be seen as having positive environmental effects, Member States must explain how they will ensure that the investment contributes to achieving the Union's 2030 climate target and 2050 climate neutrality target. In particular, the Member States should explain how a lock in of this gas-fired energy generation or gas-fired production equipment will be avoided. For example, this may include binding commitments by the beneficiary to implement decarbonisation technologies such as CCS/CCU or ~~substitute~~ **to ensure that** natural gas **can be substituted** by renewable or low carbon gas or to close the plant on a timeline consistent with the Union's climate targets⁶⁴.

Justification:

It is difficult for operator of the plant (aid beneficiary) to foresee when sufficient quantity of decarbonized gases will be available and possible to supply through gas network. In order to avoid lock-in effect aid beneficiary can commit to design the plant in the way that it can shift to low carbon gases such as hydrogen when these become available.

Section 4.2 Aid for the improvement of the energy and environmental performance of buildings

17. Section 4.2.2, point 118.

General comment

We understand point 118 that if the declared parameters are reached, all costs are eligible. However, this is not explicitly stated in the following text, so please state this explicitly (eligible expenditure in paragraph 125). Formulations on sections where only additional costs are eligible are formulated precisely. The draft amendment to the GBER states the rate of use of a public building for economic activities, from which the building is considered to be economically used; for easier application of the VP rules, we recommend stating it in the CEEAG as well.

18. Suggested change

(118) The aid must induce:

(a) in the case of renovation of existing buildings, energy performance improvements leading to a reduction in primary energy demand of at least 20 % as compared to the situation prior to the investment **and can be achieved through a succession of measures within a maximum of three years.** ~~By way of derogation, where the improvement is part of a staged renovation, the latter must lead to an overall reduction in primary energy demand of at least 30 % as compared to the situation prior to the investment, over a period of 3 years;~~

(b) in the case of new buildings, energy performance improvements leading to at least 10 % of primary energy savings compared to the threshold set for the nearly zero- energy building requirements in national measures implementing Directive 2010/31/EU of the European Parliament and of the Council⁶⁵.

Justification:

The intention of the proposed change is to increase the attractiveness of gradual renovations which are important part of the path towards the green transition. In some cases, the ability to reach proposed limit of 30% reduction of primary energy demand when conducting gradual renovation is limited, especially with the set time limit of three years. In particular for those who are not willing to borrow and rely on their savings. We believe, that too high ambition, together with a short time limit, would de facto exclude this group.

19. Section 4.2.3, point 122.

Suggested change

(122) Aid for covering the costs of adapting to Union standards that are adopted but not yet entered in force will be considered to have an incentive effect if the investment is implemented and finalised at least ~~18~~ **12** months before the Union standards enter into force.

Justification:

The proposed period does not provide sufficient time for the implementation and finalization of such measures. The suggested deadline, together with the requirement to finalize and implement the measures, would mean the cease of financing approximately 3 years in advance. All that in order to avoid a breach of this provision.

We believe, that suggested provision would also interfere with the $n + 3$ rule as stated within the Cohesion Policy. This would therefore shorten the reaction time of the approved subsidy to the forthcoming standard measure.

20. Section 4.2.5, point 134.

Suggested change

~~{134}~~ Measures that incentivise new investments in natural gas-fired equipment aimed at improving the energy efficiency of buildings may lead to a reduction in energy demand in the short run but aggravate negative environmental externalities in the longer run, compared to alternative investments. Moreover, aid for the installation of natural gas- fired equipment may unduly distort competition where it displaces investments into cleaner alternatives that are already available on the market, or where it locks in certain technologies, hampering the wider development of a market for and the use of cleaner technologies. The Commission considers that the positive effects of measures that create such a lock-in effect are unlikely to outweigh their negative effects. As part of its assessment, the Commission will consider whether the natural gas-fired equipment replaces energy equipment using the most polluting fossil fuels, such as oil and coal.

We suggest to delete this paragraph

Justification:

Gas is considered as a transition fuel, an important step in achieving the green transition. Furthermore, technology using gas is developed and, in some cases, may be even the only appropriate solution available. Therefore, the exclusion of gas installations could lead to bigger financial burden and lead to more complicated resolutions. Consequently, the ban on support for gas installations is not an advantageous move. Moreover, there is the issue of technological neutrality.

Section 4. 3 Aid for clean mobility

General remarks

21. State aid guidelines should pay a closer attention at supporting both the production of biomethane, and its actual consumption in road transport. The focus should not be put on the drivetrain technology (ICE vs EVs, since these technologies are complementary), but rather on the type of fuel or energy used to power vehicles. The fuel dimension is what needs be primarily taken into account to assess the real environmental impact of the vehicles, and to accelerate transport decarbonization. For these reasons, and in order to be coherent, the guidelines should not only allow aid for producing biogas (point 76), but also fully support its actual distribution in refuelling stations and its consumption in CNG/LNG vehicles.

Proportionality

22. Technology neutrality should be overarching principle in all of the EU legislation. Therefore, we ask for technology neutrality principle to be also applied in the *Section 4.3 Aid for clean mobility*, especially when it comes to paragraph 157. While we acknowledge that zero-emission vehicles (Electric Vehicles) are key solution to decarbonization of the transport sector in the long-run (when most of the power in the grid will come from renewable energy sources), but meanwhile we ask for the same treatment of zero-emission vehicles and other clean transport vehicles as it is not the case currently.

Avoidance of undue negative effects on competition and trade and balancing

23. We suggest to add additional category of fuels used for blending in paragraph 162.

*“162. Aid for the acquisition or leasing of CNG and LNG vehicles may be regarded as not creating long-term lock-in effects and not displacing investments into cleaner technologies if, at the moment when the Member State notifies the Commission of its plans to implement the aid measure or when the aid measure is implemented, the Member State demonstrates that cleaner alternatives are not readily available on the market and are not expected to be available in the short term. The aid may also be regarded as not having lock-in effects or displacing investments into cleaner technologies where the Member State commits to ensure that those vehicles would be operated using blending of biogas or renewable gaseous transport fuels of nonbiological origin and **low carbon gaseous transport fuels (CCS/CCU is used in production of such fuels or such fuels are produced via methane pyrolysis) (minimum 20%).**”*

“164. When assessing the distortion of competition of aid for the acquisition of clean transport vehicles, the Commission will consider whether bringing into service new transport vehicles would result in or aggravate existing market failures, such as overcapacity in the sector concerned.”

Paragraph 164 further reinforces our concern regarding technology neutrality principle in the *Section 4.3 Aid for clean mobility*. Therefore, we ask for deleting the aforementioned paragraph from the CEEAG.

CNG and LNG vehicles are a mature technology, which yet represents a comparably small share of the European fleet. Contrary to what is stated by the European Commission in its communication (point 161 and 184), aid for the acquisition of CNG and LNG vehicles and deployment of associated refueling infrastructure would therefore not result in a distortion of the competition within the internal market. **What would rather unduly distort competition is restricting aid to only a limited set of options or preferential treatment of the so-called „zero emission“ solutions over clean transport vehicles.** This seems to be the case especially for the category of Heavy-duty vehicles (HDV) and its restricted definition as provided in the section 4.2 Definitions, point (20). Here, the definition of clean transport vehicle for categories M3, N2 and N3 refers as of 1 January 2026 to the definition provided by the Article 4, point (5) of Directive 2019/1161 (i.e., the revised Clean Vehicle Directive, only 'CVD' further) on 'zero-emission heavy duty vehicle' . Nevertheless, the commitments of the Member States resulting from the legally binding targets as adopted in this revised Directive with two phases until 2030 enable the Member States to meet the requirements on mandatory share of clean vehicle in the public procurements in the HDV category with all vehicles using alternative fuels as defined in points (1) and (2) of Article 2 of Directive 2014/94/EU (i.e. any bus and trucks running on hydrogen, battery electric (including plug-in hybrids), natural gas (both CNG and LNG, including biomethane), liquid biofuels, synthetic and paraffinic fuels, LPG) . **On the contrary, the definition of the clean vehicle for this category as stipulated in these revised CEEAG (see Point 20 above) restricts the definition in the category of M3, N2 and N3 as of 1 January 2026 only for „zero-emission heavy duty vehicle“, while the revised CVD (2019/1161) define a zero-emission heavy duty vehicle only as a „sub-category“ of clean heavy duty vehicle with the whole scope of alternative fuels as mentioned above. In our opinion, this is unjustified narrowing of the scope which will further complicate fulfillment of Member States' obligations in public procurements of clean transport vehicles.** We would, therefore, request to reconsider such an approach in the definitions in HDV category line with the valid commitments and scope of CVD. Furthermore, the state aids should instead State aids should instead guarantee a level-playing field among all existing solutions to decarbonize transport, including CNG and LNG vehicles and associated refueling infrastructure. This would contribute to diversify clean mobility options for consumers and end-users, and result in faster decarbonization of the road transport sector in a cost-effective way.

We welcome and fully support that (paragraph 156): *“Environmental criteria used in the competitive bidding process may also include life-cycle considerations such as the environmental impact of the end-of-life management of the product.”*

24. Section 4.3.2.3.3, point 180.

According to this point, the aid may be granted on the basis of methods other than a competitive bidding process in the stipulated case, inter alia, “where the expected number of participants is not sufficient to ensure effective competition...”. In our opinion, it is not clear how the "sufficient number" requirement will be assessed. In our view, Member States should be able to proceed with the following points 181-182 whenever they deem it appropriate.

25. Section 4.3.2.3.3, point 182.

Although we understand that the percentage of state aid intensity under this point represents only a certain alternative to other options for granting state aid, in our view these percentages are insufficient, especially in relation to some technologies (ultra-fast charging stations and hydrogen filling stations). The minimum level should be increased to 50% for at least some technologies to reflect the state of technological progress in this area. In addition, we see no reason to distinguish between aid intensities for large, medium and small enterprises. The current situation on the market for electric vehicles or vehicles for other alternative fuels, as described in this Commission Communication, affects, in our view, all entities operating the relevant charging / filling station infrastructure equally, regardless of the type of business.

26. Section 4.3.2.4, point 185.

Although in the case of state aid for CNG / LNG filling stations we understand the meaning of the requirement for a certain minimum share of biogas or renewable gas that these stations should supply, however in our opinion a certain transitional period should be set for applicants to meet the requirement, resp. that the given project must meet the given criterion only from a certain year from the beginning of the project implementation (eg after 2 years). In addition, it is not clear whether the requirement can be met not only directly (by direct injection of the bio-ingredient into natural gas) but also indirectly (by purchasing the appropriate volume of certificates of origin). We ask for further clarification.

Section 4.4 Aid for resource efficiency and for supporting the transition towards a circular economy, point 204.

27. Point 204. states that the aided activity must not constitute a profitable practice. We consider this a confusing wording. This should probably mean that this is not a standard recycling procedure. For projects in the corporate sector, it is not possible to expect the implementation of activities that would not lead to profit in the future. We propose to adjust the wording so that the profit is not quantified, but is not excluded in the operation phase, so as not to block the implementation due to the applicants' concerns about the possibility of generating a profit. This point also makes no sense in relation to footnote 84. Likewise, the eco-innovation bonus proposal clearly indicates that not all projects need to be innovative, only more efficient or improved compared to current practice.

Section 4.8 Aid for the security of electricity supply

We would like to express our support especially to:

28. Points 284 describing the rationale for the aid, and 285 which covers compatibility rules for aid measures as capacity mechanism and interruptibility scheme.

Comment:

The current development of the electricity sector might require some additional aid; therefore, it is crucial to have this option in case it is necessary. Yet, we are raising a slight concern that the whole administrative process to allow state aid for the security of electricity supply, as described, might be challenging, administratively complicated, and time-consuming.

Section 4.9 Aid for energy infrastructure

29. Limiting Section 4.9 Aid for energy infrastructure to Projects of Common Interest (PCIs) does not reflect EU Hydrogen Strategy, which states: ***“However, deploying hydrogen in Europe faces important challenges that neither the private sector nor Member States can address alone. Driving hydrogen development past the tipping point needs critical mass in investment, an enabling regulatory framework, new lead markets, sustained research and innovation into breakthrough technologies and for bringing new solutions to the market, a large-scale infrastructure network that only the EU and the single market can offer, and cooperation with our third country partners. All actors, public and private, at European national and regional level, must work together, across the entire value chain, to build a dynamic hydrogen ecosystem in Europe. ”***

We ask for explicit recognition, in the Section 4.9, of missing market in relation to hydrogen and CO2 infrastructure as both are crucial for hydrogen market development. The low carbon gases market will not develop without government support, for example subsidies for production and use of low carbon gases including hydrogen, or **financial guarantees for hydrogen network development in the early years before there is an established user-pays base.** Guidelines on the State aid for environmental protection and energy 2014-2020 (EEAG) recognize this problem in paragraph (206): *“The Commission considers that for Projects of Common Interest as defined in Regulation (EC) No 347/2013, for smart grids, and for infrastructure investments in assisted areas, the market failures in terms of positive externalities and coordination problems are such that financing by means of tariffs may not be sufficient and State aid may be granted.”* While CEEAG recognize it in slightly different manner in paragraph (337), we are of opinion that EEAG wording in paragraph (206) is more appropriate, especially in relation to hydrogen market and infrastructure.

Issue related to hydrogen market outlined above is considered also by the European Commission, in its public consultation on Hydrogen & Gas Decarbonization Package, European Commission takes into account of the aforementioned issue in the question number 44:

*„Today’s rules for gas network tariffs (see Art. 13 of the Gas Directive) seek to avoid cross-subsidies between network users but also to provide incentives for investments. **In an emerging hydrogen market, the transported hydrogen volumes as well as the customer base might be low initially. This could lead in certain cases to high initial hydrogen network tariffs for early users of a hydrogen network.** Please indicate the appropriateness of the statements below in case incumbent methane gas network operators should be allowed to retrofit their assets for hydrogen transport. ”*

In line with the statement in the introduction section of the CEEAG: *“The Commission has estimated that achieving the newly increased 2030 climate, energy and transport targets will require EUR 350 billion of additional annual investment compared to the levels in 2011-2020, with further EUR 130 billion a year for the other environmental objectives estimated earlier. **The magnitude of this investment challenge requires mobilising both the private sector and public funds in a cost-effective manner.**”* Repurposing of methane gas networks represents cost-effective way of developing hydrogen infrastructure. ACER and CEER also acknowledge in their White Paper *When and How to Regulate Hydrogen Networks?* the benefits of repurposing of gas assets for hydrogen transport.

Support for smart gas grids in line with the definition of smart gas grid as defined in paragraph 18, (35), (v) should be added to the Section 4.9 in the similar manner as in the Guidelines on State aid for environmental protection and energy 2014-2020 paragraph (206). **Smart gas grids, which enable and facilitate the integration of renewable and low-carbon gases into the network will play a key role in a decarbonization of gas and customer empowerment. Market failure associated with smart gas grids is that of information failure (e.g., difficulty in estimating costs and benefits or lack of awareness, positive externality).**

Moreover, CEEAG states:

333. Similarly, the Commission considers that there is no State aid involved in investments where the energy infrastructure is run under a 'natural monopoly', which is deemed to exist where the following cumulative conditions are met:

(c) the infrastructure is not designed to selectively favour a specific undertaking or sector but provides benefits for society at large, which is normally the case for gas and electricity infrastructure.

Paragraph 333(c) should also include reference to hydrogen and CO₂ infrastructure in a manner consistent with paragraph 35 of the CEEAG.

Section 4.10 Aid for district heating or cooling

30. Section 4.10.2, point 341.

Suggested change:

(341). This Section applies to support for the construction or upgrade of ~~energy-efficient~~ district heating and cooling systems. Supported investments can concern heating or cooling generation ~~and storage~~ plants, **thermal storage** or the distribution network or both.

Justification:

Section 4.10 should apply also to upgrades of district heating systems which do not fulfil definition of efficient district heating system as defined by Article 2 point (41) of Directive 2012/27. Thermal storage should be eligible for support as separate entity and not only as part of production plant.

31. Section 4.10.2, point 342.

Suggested change:

(342). Such aid measures typically cover the construction or upgrade of the generation unit to use renewable energy, waste heat **or cold**, or highly-efficient cogeneration, ~~including thermal storage~~ **or power to heat** solutions, or the upgrade of the distribution network to reduce losses and increase efficiency, including through smart and digital solutions, **or the extension of the distribution network. Heating and cooling equipment within customers premises as referred to under point 117 can also be covered.**

Justification:

Heating or cooling storage and power to heat solutions should be eligible for support as separate entity and not only as part of production plant. Waste heat or cold should be used to fulfil the definition in Article 2, point (9) of Directive (EU) 2018/2001 (see also suggested new definition of waste heat or cold). Aid measures should cover not only upgrade but also extension of district heating and cooling networks. According to point 117 "Aid for heating or cooling equipment related to district heating systems is covered by Section 4.10." Point 342 should therefore cover also aid related to heating and cooling equipment installed in customer's premises.

32. Section 4.10.2, point 343.

Suggested change:

(343). Where a Member State ~~invests in~~ **grants aid for** the upgrade of a district heating and cooling system ~~without meeting the standard of energy efficiency,~~ **which is not an efficient district heating and cooling as defined in Article 2 point (41) of Directive 2012/27,** it needs **to require aid beneficiary** to commit to start the works to reach that ~~standard~~ **status** within three years following the upgrade works **where appropriate.**

Justification:

It should be clarified that 'standard of energy efficiency' actually means definition of efficient district heating and cooling in Article 2 point (41) of Directive 2012/27. Definition of efficient district heating and cooling is based on sources from which heat is produced. When the distributor of heat operates only (part of) district heating network and does not own heat production plant he cannot be made responsible for fulfilment of commitment to reach the status of efficient district heating and cooling.

33. Section 4.10.3, point 344.

Suggested change:

344. Sections 3.2.1.1. and 3.2.1.2. do not apply to aid to district heating or cooling. The Commission considers that State aid can contribute to addressing market failures by triggering the investment needed for the creation, **expansion or upgrade** of ~~energy~~ efficient district heating and cooling systems. In addition, State aid for ~~energy~~ efficient district heating and cooling systems using waste, ~~including waste heat,~~ as input fuel can make a positive contribution to environmental protection, provided that they do not circumvent the waste hierarchy principle¹¹⁵.

Justification:

The investment in expansion and upgrade of efficient district heating and cooling system should be also included and the term 'efficient district heating' defined in Article 2 point (41) of Directive 2012/27 should be used. Waste heat as defined by Article 2, point (9) of Directive (EU) 2018/2001 of the European Parliament and of the Council should be clearly distinguished from waste. Application of waste hierarchy does not make any sense in coincidence with waste heat. See also suggested definition of waste heat to be included in the Guidelines.

34. Section 4.10.5, point 347.

Suggested change:

(347) Section 3.2.2. does not apply to aid for district heating or cooling. The Commission considers that the upgrade or construction of district heating and cooling systems which rely on the most polluting fossil fuels such as coal, lignite, oil and diesel, have negative consequences on competition and trade which are unlikely to be offset unless the following cumulative conditions are fulfilled:

(a) the support is limited to ~~the upgrade of~~ the distribution network;

(b) the distribution network is or becomes fit for the transport of heat or cooling generated from renewable energy sources, **waste heat or cold or other climate-neutral sources**;

~~(c) the investment does not result in increased generation of energy from the most polluting fossil fuels (for example, by connecting additional customers);~~

~~(d)~~ **(c)** there is a clear timeline involving firm commitments for transitioning away from the most polluting fossil fuels, compatible with the Union's 2030 climate target and the 2050 climate neutrality target.

Justification:

The support should not be limited to distribution network but should cover also its extension. Condition b) should apply also to waste heat or cold or other climate-neutral sources. Original condition under c) is overridden by condition d). Any increase in generation of energy from the most polluting fossil fuels is in practice highly unlikely also given prices of allowances for emissions of GHG. Even in case it would occur in the short term it would be more than compensated by commitment to transition away from the most polluting fuels. Condition c) thus adds administrative burden with negligible effect for environment and should be deleted.

35. Section 4.10.5, point 348.

Suggested change:

(348). As regards the construction or upgrade of district heating generation installations, measures that incentivise new investments in energy based on natural gas may reduce greenhouse gas emissions in the short run but aggravate negative environmental externalities in the longer run, compared to alternative investments. For those investments in natural gas to be seen as having positive environmental effects, Member States must explain how they will ensure that the investment contributes to achieving the Union's 2030 climate target and 2050 climate neutrality target and, in particular, how a lock-in of the gas-fired energy generation or gas-fired production equipment will be avoided. For example, this may include binding commitments by/from the beneficiary to implement CCS/CCU or substitute **ensure that** natural gas **can be substituted** by renewable or low carbon gas or to close the plant on a timeline consistent with the Union's climate targets.

Justification:

It is difficult for operator of the district heating plant (aid beneficiary) to foresee when sufficient quantity of decarbonized gases will be available and possible to supply through gas network. In order to avoid lock-in effect aid beneficiary can commit to design the plant in the way that it can shift to low carbon gases such as hydrogen when these become available.

36. Section 4.10.5, point 349.

Suggested change:

(349). Section 3.3 does not apply to measures for construction or upgrade of district heating systems. In analysing the impact of State aid for district heating and cooling systems on competition and in balancing it against the supported economic activity, the Commission will carry out a case-by-case assessment balancing the benefits of the project in terms of energy efficiency and sustainability against the negative effects on competition and in particular the possible negative impact on alternative technologies or providers of heating and cooling services and networks, **taking into account national/regional strategies for decarbonisation of heating and cooling. Where the district heating system fulfils the definition of efficient district heating and cooling provided in Article 2 point (41) of Directive 2012/27 the Commission will typically assume that negative effects on competition are outweighed by positive environmental effects.**

Justification:

The case base case assessment of the balancing of the aid on local market may lead to uncertainty and in particular discourage national authorities from applying aid measures due to administrative burden. Aid for district heating and cooling should be generally considered compatible with internal market when it is compatible with national/regional strategy to decarbonize heating and cooling and the system fulfils definition of efficient district heating and cooling according Article 2 point (41) of Directive 2012/27 after the completion of the project. Similarly, as in case of aid for the reduction and removal of greenhouse gas emissions in section 4.1 application of section 3.3 should be excluded in case of measures for construction or upgrade of district heating. It should be noted that no significant harm to climate change mitigation objective was identified in Annex II of the Commission delegated regulation supplementing Regulation (EU) 2020/852.

We would also like to clarify that reference to sustainability in paragraph 349 takes into account also social dimension of the sustainability. Approximately 1.6 million households in the Czech Republic are connected to the district heating systems, which corresponds to app. 4 million inhabitants of the Czech Republic. These are mostly middle or low-income households at risk of energy poverty.