CEER Response to the European Commission Consultation on Climate, Energy and Environmental Aid Guidelines (CEEAG)

30 July 2021

1 Introduction

The European Commission has updated the *Community Guidelines on Environmental and Energy State Aid for 2014-2020 (EEAG)*. The new edition, the Guidelines on State aid for *climate, environmental protection and energy (CEEAG)*, is published for consultation[1].

As the representative body for Europe's energy regulators, CEER welcomes the opportunity to comment on the CEEAG. As a collective of National Regulatory Authorities (NRAs), CEER's competences extend to matters of energy security, market development, cost-effectiveness, regulatory certainty and financing arrangements as these areas directly affect the future development of the Internal Energy Market (IEM).

These guidelines are of relevance for energy regulators, as they will be the basis for investigations of existing arrangements and will most likely affect any plans by governments / NRAs, e.g., for new support schemes for generation capacities and renewable energy sources (RES).

2 Structure of this response

The CEEAG set out the conditions under which the Commission will scrutinise requests for State aid for energy and environment projects during a notification procedure. The Commission will assess the distortion of the internal market caused by the relevant State aid measure to ensure compatibility with Article 107 of the Treaty of the Functioning of the European Union.

CEER understands that one important aspect of the revision of the Guidelines is to harmonise the rules with the Union Law that entered into force after the publication of the EEAG, e.g., the prescriptions from the Clean Energy for all Europeans package, but also with the principles of the Green Deal and the Commission's hydrogen strategy.

Overall, CEER welcomes the introduction of the revised Guidelines. These contribute to regulatory and investment certainty and help ensure aid is well-justified and in the interest of consumers.

Furthermore, CEER welcomes and appreciates the harmonisation and coherence with other rules and principles as uniformity of the legal system is an important aspect for balanced, transparent, and understandable rules that facilitate a minimisation of distortions in the Internal Energy Market.

[1] Guidelines on State aid for climate, environmental protection and energy 2022, https://ec.europa.eu/competition-policy/public-consultations/2021-ceeag_de.

CEER supports the stimulation of RES integration by widening the scope of the Guidelines to all measures that are suitable to reduce greenhouse gases and the strong commitment to end support for fossil fuels.

More detailed commentary / the remainder of the CEER response is structured by the number of the paragraph of the consultation document published by the Commission.

3 Detailed commentary

3.1 Paragraph 21

The introduction of the criterion “absence of breach of any relevant provision of Union law” in paragraph 21 (a) (iii) and the weighing up the positive and negative effects of the planned measure in paragraph 21 (b) (vi) are welcomed to ensure coherence with other rules and allow Member States to support projects or technologies that might reduce greenhouse gases, e.g., in the short-term, but that would not fulfil all criteria without a balancing of effects.

3.2 Paragraph 28

The general rule, that aid will in principle not be considered compatible with the internal market once implementation has started, does not reflect that aid could still be granted in competitive bidding processes and that for some technologies, e.g., onshore wind, it is not unusual for projects to apply for support during a tendering procedure when implementation of the project has already begun. CEER is aware that paragraph 30 already states some exceptions to the general rule. However, in the case of biomass and biogas aid might be justified for the continuous operation in an environmentally friendly way, e.g., when a running installation applies for support.

3.3 Paragraph 40

The consideration of paragraph 40 is very welcomed by CEER, especially with the explicit reference to the possible interference with ETS. CEER would like to propose that the Commission intensifies this principle by including a binding rule requiring CO_2 certificates to be cancelled when support is granted. Otherwise, a mere shift of emissions from one sector to another will occur which creates a conflict with paragraph 99. Furthermore, reductions of taxes and levies should only be granted insofar as the planned border adjustment mechanism does not relieve that specific pressure. The Commission could consider revising paragraph 81 correspondingly.

3.4 Paragraph 47

CEER welcomes that the net extra cost (funding gap) of a project can now be covered in contrast to the 45-65% coverage allowed under the regime of the EEAG.

3.5 Paragraph 48

CEER welcomes the Commission’s commitment to tendering procedures for RES. However, the principle of reducing tendered volumes after undersubscribed bidding processes as described in paragraph 48 (d) should not be a general principle. Competition can still exist even if in one or a few bidding processes the tendered volume is not met or oversubscribed. Alterations to running tendering schemes discourage competitors and will aggravate undersubscription and strategic bidding. Well-adjusted ceiling prices, for example, might compensate the risk of overcompensation.

The Commission should consider allowing more flexible designs for bidding processes carried out by Member States and NRAs.

3.6 Paragraph 49

The Commission considers that the selection criteria should as a general rule be based on the bid price and that, in a few exceptional cases, it may be appropriate to include other non-price selection criteria (for instance additional environmental, technological or social criteria), but only up to 25% of the weighting of all selection criteria. CEER considers that non-price selection criteria are relevant in certain cases and should be allowed to weigh up to 30-40%, for example to promote environmentally friendly installations or innovative solutions.

3.7 Paragraph 50-52

Without competitive bidding processes in place to grant aid, Member States are required to determine the net extra cost by comparing the profitability of the factual and counterfactual scenarios. Here, additional clarification would be helpful to ensure that indirect support, e.g., via behind-the-meter effects, is considered.

3.8 Paragraph 56

CEER welcomes transparency of aid granted as a key element to reduce distortive effects on the market. The existing threshold for the publication of aid granted and exceeding €500 000 referred to in the EEAG seems well-adjusted and adequate. Reducing this threshold to €100 000 might impose additional reporting obligations on RES operators and will certainly increase administrative expenses in Member States. It is questionable whether aid granted below €500 000 would be capable of distorting the internal market significantly and thus whether the new threshold is appropriate to achieve the balance between transparency and bureaucracy.

3.9 Paragraph 83/90

CEER agrees that bidding processes should, in principle, be designed technology neutral and that technology specific auctions shall be an exception to that general rule. CEER would like to propose that technology specific tendering procedures might still be carried out whenever their expected results seem to be more promising.

3.10 Paragraph 85-88

In general, CEER supports public consultations and the involvement of citizens and customers. However, it seems that public consultations with a duration of several weeks are suitable for mid- and long-term decision-making processes rather than administrative procedures. This could hinder Member States from setting up effective support schemes on time to meet the necessary amount of greenhouse gas reductions. It should be up to Member States and their national rules on how to consult the public. Another option could be to limit the obligation of a public consultation to entirely new support schemes only so that amendments to existing aid do not need consultation.

3.11 Paragraph 92

CEER is critical of the fact that the size limits are to be set significantly lower than in paragraph 127 EEAG. These limits were well-adjusted and appropriate to achieve the necessary balance of investment certainty and bureaucracy to obtain support. The obligation to participate in bidding processes affects the project duration and the need for mid-term financing to realise the project. Projects below the limits will in many cases be planned and implemented by small and medium enterprises (SMEs). CEER welcomes heterogeneity amongst RES operators, therefore it does seem disproportionate to impose additional hurdles on smaller project agents.

3.12 Paragraph 96

In general, CEER welcomes that "production costs may include a reasonable profit". This aspect should be addressed in the general part of the Guidelines (e.g., in paragraph 50) for all types of eligible cost and not only specifically for biofuels. Otherwise, readers might conclude that reasonable profit was only allowed for biofuels.

3.13 Paragraph 97

CEER proposes that there should not be an exemption from the rules set out in section 3.3 for measures for the reduction of greenhouse gas emissions involving fossil fuels.

3.14 Paragraph 104

CEER strongly supports the idea to design aid in such a way that market distortion is reduced to the very minimum and that beneficiaries remain exposed to market risks. On the other hand, the Commission's consideration in paragraph 123 EEAG still holds: "However, for certain small types of installations, this may not be feasible or appropriate." CEER agrees with that statement, therefore, the generality of the requirement should either be reconsidered and the threshold should be maintained at 500 kW or it should be reduced but not removed completely.

3.15 Paragraph 105

Decarbonisation measures that include infrastructure projects (e.g., direct lines according to Article 7 Directive 2019/944) can result in a duplication of regulated infrastructure of the wider network. CEER proposes to revise paragraph 105 and 339 (b) to take this aspect into account when assessing infrastructure projects.

3.16 Paragraph 106

As regards new, dedicated infrastructure projects, which apparently also include hydrogen infrastructure, the Commission considers that the distortive effect of State aid for such infrastructure which initially connects a limited number of users can be mitigated if it is part of a plan to develop a wider Union network and if there is separate accounting, some form of third-party access and the offsetting or compensation of the advantages enjoyed by the aid beneficiaries and the infrastructure users.

In its Response to the Public Consultation on the Hydrogen and Gas Market Decarbonisation Package, CEER has argued for a flexible approach: *"Given the uncertainties on the development of the hydrogen sector, Member States should be granted flexibility to find the best solutions depending on the speed, level and type of development of the hydrogen sector in their respective countries. Regulatory measures, such as the type of network access, should be gradually introduced based on pre-determined conditions which would trigger regulatory intervention. This would allow regulation to be introduced only when needed (e.g. when there is a risk of market abuse or harm) and in a targeted way, while avoiding unnecessary measures that may hinder innovation and investment."*

European energy regulators advocate for pragmatism in a context where hydrogen development looks very challenging and requires important public support. It is too early to elaborate strict rules preventing "distortions" in such an immature sector. Developing the hydrogen value chain should be the priority of the EU.

3.17 Paragraph 110

CEER proposes to refer in the text explicitly to the provisions of Annex II lit. a) Directive 2012/27/EU.

3.18 Paragraph 261

CEER welcomes that a reduction of taxes and parafiscal levies is considered appropriate by CEEAG as this reflects the economic conditions of many undertakings. CEER proposes to refer in the text explicitly to the provisions of paragraph 108 for the application of tax or levy reduction.

3.19 Paragraph 414

Bringing existing schemes into line with the new Guidelines requires time and resources to modify the schemes and may create investor uncertainty. CEER welcomes the fact that in contrast to the EEAG the Commission has extended the timeframe for implementation from 12 to 24 months. However, for some rules, e.g., concerning changes to existing auction designs, there should be a longer timeframe to implement the rules accordingly or to change to the new rules and evaluate on a step-by-step basis.

3.20 Paragraph 415

CEER recommends including regular evaluation periods in the Guidelines, e.g., six years, similar to paragraph 246 EEAG and paragraph 203 of its predecessor (2008/C 82/01).

About CEER

The Council of European Energy Regulators (CEER) is the voice of Europe's national energy regulators. CEER's members and observers comprise 39 national energy regulatory authorities (NRAs) from across Europe.

CEER is legally established as a not-for-profit association under Belgian law, with a small Secretariat based in Brussels to assist the organisation.

CEER supports its NRA members/observers in their responsibilities, sharing experience and developing regulatory capacity and best practices. It does so by facilitating expert working group meetings, hosting workshops and events, supporting the development and publication of regulatory papers, and through an in-house Training Academy. Through CEER, European NRAs cooperate and develop common position papers, advice and forward-thinking recommendations to improve the electricity and gas markets for the benefit of consumers and businesses.

In terms of policy, CEER actively promotes an investment friendly, harmonised regulatory environment and the consistent application of existing EU legislation. A key objective of CEER is to facilitate the creation of a single, competitive, efficient and sustainable Internal Energy Market in Europe that works in the consumer interest.

Specifically, CEER deals with a range of energy regulatory issues including wholesale and retail markets; consumer issues; distribution networks; smart grids; flexibility; sustainability; and international cooperation.

More information is available at www.ceer.eu.