



Brussels, 22nd of July 2021

Dear Margrethe Vestager,
Executive Vice-President for a Europe fit for the Digital Age

For due knowledge to
Frans Timmermans
Executive Vice-President for the European Green Deal

Subject: Greens/EFA contribution to the revision of the Climate, Energy and Environmental Aid Guidelines (CEEAG)

In the context of the revision of the of the Climate, Energy and Environmental Aid Guidelines (CEEAG)¹, we would like, on behalf of the Greens/EFA group in the European Parliament, to provide our contribution for your consideration. It is crucial that the updated framework for state aid aligns with the objectives of the Green Deal and the EU's energy, environmental and climate legislation.

State aid rules are key to meet the European climate and energy objectives and ultimately achieve a climate neutral, highly energy-efficient and fully renewables-based economy as soon as possible. If channelled to the wrong policy goals, state aid has the potential to water down the Green Deal and all legislative efforts of the 'Fit for 55' package. This is why we need to ensure that state aid rules truly promote a green transition as an overarching objective and ensure that no funding is given to fossil fuels, nuclear and other predictable stranded assets. This is particularly true for the CEEAG, which by definition should guide state aid for "climate, environmental protection and energy". Building on this overarching vision, the letter below outlines the main horizontal calls the Greens/EFA group would like the Commission to address in the draft CEEAG, while the enclosed annex provides some chapter-specific observations and calls.

1. The CEEAG should align with the most up-to-date Union climate, energy, zero-pollution and biodiversity objectives. The increased role of climate change and the reduction of greenhouse gas emissions in the draft CEEAG is welcomed, but should go hand in hand with environmental and health protection. Biodiversity loss and climate change will not be successfully resolved unless both are tackled together². The objectives of nature protection and climate mitigation should be equally important in the CEEAG. This is why the CEEAG should include explicit references to the Treaty of the European Union (Article 3), the Treaty of the Functioning of the European Union (Articles 9 and 11³) and the EU Charter of fundamental rights (Article 37) calling for a consistent, coherent and integrated approach of environmental concerns across all EU policies. We need a horizontal obligation to assess the environmental impact of all state aid. In addition, the CEEAG should mention the 8th environment action programme and the 2030 biodiversity strategy so that their objectives are also streamlined in state aid policy. Finally, any reference to legislations, which are under revision in the "fit for 55 package", should be updated accordingly as to avoid lock-in to outdated, and less ambitious, provisions.

2. The CEEAG must not support fossil fuels (nor nuclear). The recent report from the International Energy Agency on a net zero pathway by 2050⁴ is clear: it requires the immediate and massive deployment of renewable energy technologies and to stop investments in fossil fuels. Phasing out fossil

¹ https://ec.europa.eu/competition-policy/public-consultations/2021-ceeag_en

² IBPES report, 10 June 2021: <https://ipbes.net/sites/default/files/2021-06/20210606%20Media%20Release%20EMBARGO%203pm%20CEST%2010%20June.pdf>

³ The Commission's forestry and agriculture state aid guidelines already include a mention of Article 11 TFUE and sustainable development. European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020 (page 20)

⁴ <https://www.iea.org/news/pathway-to-critical-and-formidable-goal-of-net-zero-emissions-by-2050-is-narrow-but-brings-huge-benefits>

fuels means a correlative end of subsidies supporting them, in order to free those resources for efficiency measures and renewable sources deployment⁵. However, the current draft guidelines unfortunately still allow state aid to fossil fuels and nuclear⁶. For instance, gas investments would be considered compatible with state aid rules, in case they foresee capturing the carbon for permanent storage and/or replacing fossil fuels with low-carbon gas. A commitment to replace fossil gas with low-carbon gas in the future is absurd, as low carbon gases, such as low carbon hydrogen, may be produced from gas or nuclear power. Moreover, low carbon gases including renewable hydrogen, should be used only when there is no more energy efficient and sustainable alternative to achieve climate neutrality. These would certainly not cover power generation, heat or transport applications that can be more cost- and energy efficiently electrified with renewable sources. In addition, low carbon gases still cause emissions, not in line with the climate neutrality objective. The Commission needs to send a clear signal and adopt guidelines that do not allow Member States to provide any direct or indirect support to fossil fuels and nuclear, as they are not compatible with the EU's ecological transition objectives. The same holds true for direct and indirect environmentally harmful subsidies, other than fossil fuels, which should be phased out as soon as possible and, hence, not find their way within the CEEAG⁷.

3. The CEEAG should implement the energy efficiency first principle and more broadly the 'hierarchy principle'. The EU's ultimate energy priority is to prioritise energy efficiency and energy savings across all sectors (beyond energy policy) in the EU economy⁸. Similarly, energy use should be steered to follow the 'hierarchy principle' meaning we first need to focus on energy savings, followed by renewable direct electrification and enhanced use of renewable heat, cold and storage to foster further integration across sectors. Finally, if needed, we could use sustainable renewable-based fuels or gases but only for applications that cannot be abated otherwise (e.g. steel production, maritime and aviation). The draft CEEAG must mention these principles as a matter of priority for assessing whether state aid support is granted to an energy measure really necessary (e.g. in particular aid support for generating capacity, resource adequacy and energy infrastructure). By including these principles, the Commission would provide clear guidance that Member States should consider energy efficiency measures first and check whether a cost-efficient energy efficiency measure cannot replace the envisaged state aid scheme or a more energy efficient and sustainable renewable energy source should be prioritised instead. The long expected Commission's interpretation guidelines on the energy efficiency first principle should support this assessment.

4. The CEEAG should boost sustainable renewable energy sources and empower smaller actors. The revised guidelines should allow Member States to establish all necessary incentives to achieve the 2030 (and beyond) renewable energy objectives as well as to comply with related legal provisions, as for instance, the obligation to set dedicated procedures to support renewable energy communities (RECs). The current draft CEEAG goes exactly in the opposite direction by, for instance, deleting (and broadening) the dedicated aid category to support renewables, and disincentivizing Member States to design dedicated aid for renewable energy sources and smaller actors in particular. This approach risks to seriously jeopardize the achievement of the renewable energy objectives, including social acceptance of the transition and instead gives the perfect excuse for Member States to continue supporting fossil based energy. The Commission should be coherent with its own work and build the CEEAG on the existing legislation, while also setting the path for ensuring the achievements of more ambitious energy goals to be set under the "fit for 55" package". For this reason, the Commission should reinstate the dedicated chapter for aid to renewable energy and provide for specific provisions to support RECs and smaller actors, among others by exempting them from mandatory auctioning and/or

⁵ The EU and Member States have also pledged in several occasions to phase-out fossil fuels subsidies and in particular coal. See e.g. i) The European Green Deal COM(2019) 640 final, p.10; the report on the State of the Energy Union pursuant to Regulation (EU) 2018/1999 COM(2020) 950 final, p. 22; Council decision 2010/787 of 10 December 2010 on state aid to facilitate the closure of uncompetitive coal mines, recitals (2) and (3).

⁶ The different categories of state aid listed include support, among others, to LNG, diesel, aid for fossil gas-based heating and cooling equipment, aid for the production of low-carbon energy, aid for carbon capture, storage and use as well as aid for dedicated infrastructure projects for fossil gas, as well as fossil-gas based hydrogen and CCS/CCU. The low-carbon category, not having a legally recognised definition, may also entail indirect support to nuclear energy for instance for hydrogen from nuclear sources/grey electricity.

⁷ Both the Commission proposal on the "8th environmental action programme" and the Parliament Decision in first reading clearly calls for this. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020PC0652> https://www.europarl.europa.eu/doceo/document/TA-9-2021-0352_EN.html

⁸ Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, Article 2(18) and recital (64)

substantially increase the proposed exception thresholds. (See more detailed calls and thresholds in Annex- point A).

5. The CEEAG should promote transparency, access to justice and information about compliance with EU environmental law. The Compliance Committee of the Aarhus Convention, of which the EU is a party to, recently strengthened the principle that environmental protection must be streamlined into state aid. It called on the EU to comply with the Aarhus Convention by opening the possibility for citizens and NGOs to challenge EU Commission state aid decisions that may contravene EU law relating to the environment⁹. We urge the Commission to take early and effective steps¹⁰ to address this issue, including endorsing the Committee's findings at the Meeting of the Parties in October 2021. In the meantime, the templates currently used for state aid notifications by Member States do not provide comprehensive evidence that the state aid scheme is in full compliance with EU environmental law, objectives and strategies, whereas the Member States are better placed than any other stakeholder to provide this information. In addition, several NGOs complained about the lack of transparency of how the Commission assesses the compliance of national state aid schemes with EU law. It is unfortunate that the draft CEEAG do not suggest any improvement here. For example, we suggest that the Commission increases transparency in the future by disclosing the timing of the procedural steps in the state aid register and publishing the pre-notification decision as well as the letters to Member States when their proposed measures do not qualify as state aid. The Commission should also better explain how they assess the request for state aid's compliance with EU environmental law. We also expect the Commission to treat NGO complaints as admissible when they provide evidence of breaches of environmental law by aid beneficiaries.¹¹

6. The CEEAG should provide clear definitions and methodologies. The draft CEEAG includes several concepts without attaching a clear definition to them or a methodology to assess them¹². This bears the risk of a lack of guidance for Member States and investors or, worst, of an adoption of multiple definitions or methodologies across the EU undermining the effectiveness of the guidelines and the homogenous implementation of the related climate, energy and environmental policies. The Commission should not defer further clarification of definition and methodologies to future documents and instead provide clear guidance within the scope of the CEEAG.

We thank you in advance for considering our remarks in the final version of the CEEAG and remain at your disposal should you want to discuss them in further details.

Yours sincerely,

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⁹ https://unece.org/sites/default/files/2021-03/C128_EU_findings_advance%20unedited.pdf

¹⁰ The European Commission should respect its political statement and commitment to analyse the implications of these findings and to assess the available options by the end of 2022. It should then come forward with measures to address the issue by the end of 2023 in order to ensure access to justice for citizens and NGOs in this matter.

¹¹ The Commission stated that such complaints should be admissible in its observations of 7 December 2020 in case ACCC/C:2015/128: https://unece.org/fileadmin/DAM/env/pp/compliance/C2015-128_European_Union/Correspondence_with_the_Party_concerned/frPartyC128_07.12.2020_comments.pdf

¹² To name just a few: "fit for the use of hydrogen", "lock-in avoidance", "additional costs for the closure of coal mines", no guidance on defining how measures contribute "efficiently to greenhouse gas emissions reductions".

Annex - chapter-specific comments on the draft CEEAG

This annex provides a set of more detailed comments on several chapters of the draft CEEAG.

A. On the “Aid for the reduction and removal of greenhouse gas emissions including through support for renewable energy” (4.1)

- **The CEEAG should reintroduce the dedicated aid category to support renewable energy.** The draft guidelines create a new overarching aid category “for the reduction and removal of greenhouse gases” collecting and broadening various of the 2014 EEAG's aid categories, and in doing so deleting the previous dedicated chapters for aid to renewables. This means that renewable energy will now compete for state aid with whatever low-carbon technology and in general, against any measure reducing or removing GHGs. Derogation to multi-technology tenders seems possible, but only under restricted circumstances and great administrative burden for Member States. Moreover, the possibility to organise aid for specific RES-technologies seems completely ruled out, because the draft CEEAG indicates that RES specific schemes (as derogation to multi-tech approach) should be open to all RES technologies. This goes against what is established under the Renewable Energy Directive (art 4) which expressly states that Member States can limit the tendering to specific RES technologies. Ultimately, under the current draft, Member States must not only have the political will to provide support to renewables, they must also have the willingness to go through the necessary hurdles to make that happen. This creates the perfect excuse for them to continue supporting fossil fuels and vested interests at the expense of renewables deployment. Achieving the Green deal means enabling Member States to support specific renewable energy technologies and provide the financial incentives to do so. State aid guidelines that hide behind 'technology neutrality' (i.e. supporting any activity as long as it reduces greenhouse gases) is misleading and means low-carbon technologies are considered as good as renewables. The Commission needs to reintroduce the dedicated chapter to support renewables whereby RES technology-specific schemes should be reintroduced and apply as the rule and not the exception. In fact, in many Member States, technology neutrality in renewables support schemes had the effect of funnelling support to projects advantaged in presenting winning bids instead of to solutions best adapted to the Member States' territory and specificities. A balanced deployment of renewables thanks to renewable energy sources technology-specific support schemes is likely to be overall more cost efficient. Reintroducing the chapter with such characteristics does not only make sense if the EU wants to achieve its own energy objectives (expected to be even increased under the Fit for 2030 Package), but it is also necessary to enable the provisions of the Renewable Energy Directive 2018/2001 (art 4).
- **The CEEAG must enable smaller actors in the renewable sector to access state aid on an equal footing with large participants.** The draft guidelines do not make a distinction between categories of players to be supported, especially for small players such as renewable energy communities (RECs). Small stakeholders would now have to compete not only with big players investing in the renewable sector but also in the low-carbon sector. In practice, this will make it even harder for SMEs and energy communities to get access to financial support. The current few exceptions would require additional analytical and procedural requirements for Member States, impeding them to be used in practice. On the other hand, Member States also have a perverse incentive to keep renewable energy communities out of support schemes, because if they amend a support scheme without changing the scope or eligibility, they do not have to hold a public consultation. Competitive bidding is also still a default rule and the foreseen thresholds for exempting smaller actors are too low to be workable¹³. This approach goes against the Clean Energy package,

¹³ The threshold for exempting small actors from competitive bidding is now set at 400 kW to be lowered to 200 kW from 2026 and mirrors the thresholds employed for Balancing responsibility in Art 5 of the Electricity Market Regulation. These thresholds are too low to actually be workable for RECs and smaller actors. Moreover, the number choice is completely arbitrary as balancing responsibility has nothing to do with participating in competitive bidding. The former relates to licensing requirements

and the Renewable Energy Directive specifically, which for the first time provides individual basic rights for citizens to participate in the energy market (as individuals or communities). One of the pillars of this enabling framework is the specific legal requirements for Member States to take into account the specificities of RECs while designing their renewables support schemes¹⁴. By not providing clear guidance for how to support small market actors and doing away with exemptions from participating in tenders, the Commission would create a huge barrier for them to develop at the national level, and to participate in bidding contests against experienced organised market players. This will make it harder for Member States to implement their legal requirements, resulting in further market concentration and a more implicitly discriminatory market that prevents entry of small and non-commercial market actors, erasing many of the gains the Renewable Energy Directive has made to create a more level playing field in the Internal Energy Market for citizen and community participation.

Member States need guidelines to comply with the Renewable Energy Directive and the CEEAG are the right instrument to deliver them. The Commission needs to introduce a specific chapter (or a sub-chapter) with dedicated rules and procedures for RECs and smaller actors, including for example:

- Member States are required to design competitive bidding procedures for renewables ensuring equal access and participation of RECs and smaller actors, in particular through the integration of social criteria in the tendering design;
 - Exemption for RECs and smaller actors from mandatory auctioning and/or a substantial increase of the thresholds for exempting smaller actors to participate in these auctioning (at least 10 turbines with a capacity of 6 MW each for wind energy and 10 MW for all other renewable energy technologies);
 - Member States are allowed to provide fixed remuneration to small projects according to the 2014-2020 EEAG thresholds and to RECs according to specific higher thresholds (at least 5MW for all technologies and 6 turbines of 6MW each for wind);
 - A reduction of administrative burden for Member States willing to develop support schemes to jump-start their community energy sector. The CEEAG should acknowledge the difficulty in conducting a thorough assessment of the benefits and costs of developing dedicated schemes for nascent renewable energy communities and provide for simplified procedures in conducting the assessment.
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- **The CEEAG should ensure the implementation of the ‘polluter-pays’ principle.** The chapter on greenhouse gas emission reduction lacks a clear reference to the ‘polluter pays principle’ and to the rule that undertakings should not be eligible for state aid as long as the polluter pays principle is not fully applied, with the full phase-out of free allowances and compensation of indirect carbon costs. . Companies benefiting from free allowances under the ETS should not be priority companies to receive state aid support, as they already do not pay the real price for their emissions. State aid support should provide subsidies for climate-neutral proof projects only which implies that there should be a justification as to how all industrial investments will contribute to the long-term 2050 climate neutrality target (e.g. for now, the draft CEEAG only require this for investment based on natural gas, but not for investment based on CCS/CCU). In addition, the calculation of emission reductions for given projects is unfortunately left in the hands of each individual Member State, which bears the risk of leading to different accounting. The EU Commission should instead provide an EU-wide methodology, to guarantee consistent calculation across the EU.). Finally, the GHG emission chapter should ensure that the Commission takes into consideration all greenhouse gas emissions and not just CO₂.
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- **Contracts for Difference only for Renewable Energy Sources (RES).** As long as environmental standards are not yet strict and pricing is not yet fair, Member States must be allowed to go into specific forms of cooperation to help companies to invest into sustainable

that RECs can externalise to third party, while the latter raises practical issues for RECs including financing of projects, internal governance, project costs due to size and business model, and navigation of administrative and regulatory procedures.

¹⁴ Renewable Energy Directive 2018/2001 Art 4 and 22 and accompanying recital 16, 17, 19, 26

business models. For this reason, we welcome that the draft CEEAG mentions the possibility of granting aid also in the form of contract for difference. These tools can be a sensible policy measure to offset structural impediments to the green transformation. It should be clear however, that carbon contracts for difference should only be awarded to renewable technologies which contribute to our climate objectives. Contracts for difference in the renewable energy sector can encourage project financing and investments by providing long-term stable income for developers while offering consumers a predictable price for their electricity use. In this way, carbon contracts for difference can shield both sellers and buyers from price volatility.

- B. On the “aid for the improvement of the energy and environmental performance of buildings” (4.2).** The basic requirement of reducing primary energy demand by 10% for new buildings and 20% for existing buildings is too low compared to the ambitions needed to reach climate neutrality in the sector. Given that buildings have to reduce their greenhouse gas emissions by 60% until 2030 and must become climate neutral by 2050, shallow renovations not leading to the necessary energy performance levels should not be encouraged through state aid. The taxonomy for example requires a 30% reduction of primary energy demand for existing buildings and the CEEAG should at least align with it. There is also no reason to require that renewables and energy efficiency intermediaries be profit-driven as a condition for them to receive energy efficiency aid measure (point 136(b) CEEAG) since this excludes energy communities in an unfair manner and distorts the level playing field with other undertakings.
- C. On the “aid for clean mobility” (4.3).** The provisions (and exemptions) therein still allow for aid to the deployment and continuation of the use of CNG, LNG, LPG, diesel and fossil based /carbon intensive hydrogen. Methane and other GHG impacts of the listed sources are left out despite resulting incompatibilities with the climate neutrality goals. Finally, the section does not even implement the hierarchy principle as it provides no guidance for prioritising the most sustainable and energy efficient energy sources in the different applications.
- D. On the “aid for the remediation of contaminated sites, for the rehabilitation of natural habitats and ecosystems and for biodiversity and nature-based solutions” (4.6).** State aid should not be used to invest in nature based solutions where these are used in biodiversity or CO2 offsetting schemes, since these schemes may be used to greenwash the status quo whereby not enough progress is being made to swiftly reduce CO2 emissions and curb biodiversity loss. This makes it difficult to measure genuine progress made towards these important goals. We welcome the requirement that Member States take legal action against polluters to enforce their obligations prior to considering granting any aid and we encourage the Commission to request all evidence that legal remedies have been duly exhausted before a Member State notified a remediation aid measure.
- E. On the “aid in the form of reduction of taxes or parafiscal levies” (4.7):** any reduction, exemption from paying costs and levies, or indirect compensation of costs, should be subject to the beneficiary undertakings making ambitious and effective investments in energy efficiency and renewable energy development without the use of state aid to cover those costs.
- F. On the “aid for the security of electricity supply” (4.8).** The whole category misses a reference to the energy efficiency first principle, which would have a huge influence on the size of the required capacity supported and on the priority of the assets that can participate in the mechanisms (demand response vis-a-vis gas power plants). Whereas the 2014 EEAG required that cleaner technologies be given preferential treatment in case of equivalent technical parameters, the revision only allows or “encourage” Member States to limit participation of most polluting capacity or set preferential criteria for cleaner technologies (286, 303 and 304). This shortfall needs to be tackled and the chapter aligned with existing EU legislation and commitments.

- G. **On the aid for energy infrastructure (4.9).** Fossil gas infrastructures can still be financed under the new guidelines, which is at odds with climate science. The restricting conditions included are poorly defined and insufficient. Moreover, state aid for hydrogen infrastructure should only be eligible when derived from additional renewable energy capacities and for dedicated infrastructure (first chapter), given that the associated emissions with other forms of hydrogen are incompatible with the climate goals.
- H. **On the “aid for District Heating and Cooling (DHC)” (4.10).** Provisions here still allows fossil fuels based DHC upgrades (coal, lignite, oil and even diesel), which is at odds with climate science and international commitments. Also investments in gas based DHC can be encouraged by state aid, with conditionalities that leave out methane impacts and that embrace CCS and low carbon gas technologies despite remaining GHG impacts and resulting incompatibilities with the climate neutrality goal. Instead, state aid should be channelled into renewable based, highly energy efficient, low-temperature and integrated 4th and 5th generation DHC networks.
- I. **On the aid in the form of reductions from electricity levies for energy-intensive users (4.11).** This aid category still primarily looks into the overall electricity consumption. There is hence a lack of incentive for energy-intensive users to reduce their electricity consumption, as this would possibly mean losing reductions from electricity levies. The EE1st principle has hence not been implemented in this category and must be revised.
- J. **On the “Aid for coal, peat and oil shale closure” (4.12).** For aid to be granted to concerned undertakings, it must be demonstrated that it is the most cost-effective way to reach environmental targets, considering all costs and externalities, as well as the evolution of markets and climate policies. In this context, calculations about the expected evolution of carbon prices, which are used to determine the cost effectiveness of an aid measure must be made transparent to the public. It is not sufficient to show that a state aid measure has a positive environmental impact. Before aid is granted, holistic impact assessments and comparisons with energy efficient and more sustainable renewable alternatives must be presented to show that state aid is given to the most cost-effective, energy efficient and sustainable long-term solution, in line with science and the Green Deal objectives and in order to avoid lock-in. Moreover, the chapter employs undefined concepts and methodologies, promising risks of subjective and lax interpretation by Member States. For instance, “additional closure aid” that can be compensated in addition to foregone profits of profitable plants of coalmines (377) is an undefined concept and it is not clear which costs can be considered here. There is also no timeline by when coal activities need to be closed down (370).