

EC Draft Guidelines on State aid for climate, environmental protection and energy 2022

A Eurelectric response paper

August 2021



Eurelectric represents the interests of the electricity industry in Europe. Our work covers all major issues affecting our sector. Our members represent the electricity industry in over 30 European countries.

We cover the entire industry from electricity generation and markets to distribution networks and customer issues. We also have affiliates active on several other continents and business associates from a wide variety of sectors with a direct interest in the electricity industry.

We stand for

The vision of the European power sector is to enable and sustain:

- A vibrant competitive European economy, reliably powered by clean, carbon-neutral energy
- A smart, energy efficient and truly sustainable society for all citizens of Europe

We are committed to lead a cost-effective energy transition by:

investing in clean power generation and transition-enabling solutions, to reduce emissions and actively pursue efforts to become carbon-neutral well before mid-century, taking into account different starting points and commercial availability of key transition technologies;

transforming the energy system to make it more responsive, resilient and efficient. This includes increased use of renewable energy, digitalisation, demand side response and reinforcement of grids so they can function as platforms and enablers for customers, cities and communities;

accelerating the energy transition in other economic sectors by offering competitive electricity as a transformation tool for transport, heating and industry;

embedding sustainability in all parts of our value chain and take measures to support the transformation of existing assets towards a zero carbon society;

innovating to discover the cutting-edge business models and develop the breakthrough technologies that are indispensable to allow

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WG Wholesale Market Design & Investment Frameworks

Contact:
Stella BENFATTO, Advisor – Wholesale Markets - Investment Lead -
sbenfatto@eurelectric.org
Charlotte RENAUD, Head of Markets & Customers –
crenaud@eurelectric.org

Eurelectric’s response paper to the EC Draft Guidelines on State aid for climate, environmental protection and energy 2022

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Key messages

Section 2 - Scope and definitions and Section 3 - Compatibility assessment under article 107(3), point (C), of the Treaty

- **Eurelectric welcomes the broadening of the CEEAG's scope to include contributing to achieving the redefined objective of common interest as refers to the European Green Deal.**
- As mentioned in our response to the public consultation in January 2021, the CEEAG should have a broader scope to cover all the eligible projects and technologies that are affected by market failures and contribute to the effective and efficient decarbonisation of EU economies.
- The EC CEEAG proposal should, however, not only help achieve environmental and climate ambitions. **The CEEAG should keep in balance the key three objectives of energy policy: 1) carbon-neutrality, 2) the resilience and competitiveness of European industry and 3) the security of supply, while removing subsidies for fossil fuels.**

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

- **The guidelines should establish the necessary framework to allow all Member States to support – when needed – all technologies that can contribute to the achievement of their National Energy Climate Plans (NECPs), in accordance with increased EU decarbonisation objectives.** In particular, we call on the European Commission (EC) to consider all available technologies that can contribute to those objectives and, at the same time, to consider the national conditions and singularities of electricity generation portfolios, permitting regimes/concessions, environmental constrains and market design. A level playing field shall be the main goal of policy action, technology neutrality as well as size independency shall be the baseline for any State aid measure a Member States would deem necessary.
- The guidelines should **seek coherence with the existing EU acquis and take into consideration ongoing legislative processes**, including the initiatives and revisions under the recently published “Fit for 55 package” and the EU Taxonomy framework.
- Regarding **storage**, we believe that **all types of storage, including stand-alone and those combined with renewable power plants, should be explicitly covered in this section 4.1 to reflect their growing role in contributing to decarbonisation in terms of integration of renewable sources and avoiding curtailment of renewable energy.** A reference should also be made to article 54 of Directive 944/2019 in order to ensure that the procedures for the procurement of storage systems are carried out as fairly as possible. In this context, storage should be explicitly mentioned under section 4.1.2, paragraph 74 to reflect the growing importance of storage in supporting the cost-effective system

integration of variable renewables, avoiding the curtailment of renewable energy. Finally, the expected contribution from storage to the decarbonisation of the energy system should be clarified.

Section 4.3: Aid for Clean mobility

- **Electrification of transport through investments in e-mobility and re-charging infrastructure should be considered paramount in achieving the European Green Deal ambitions.** Therefore, Eurelectric welcomes that the proposal for the revised CEEAG covers and supports such developments across Europe.

Section 4.6: Aid for the remediation of contaminated sites, for the rehabilitation of natural habitats and ecosystems and for biodiversity and nature-based solutions

- **The State aid assessment process could benefit from considering additional externalities, especially based on a forward-looking view and not only short-term perspective (e.g. risk of carbon lock-in in case of too myopic approach). It is important to reflect how State aid policy could shape some incentives for Member States and investors to anticipate long-term targets.** This is even more important in the electricity sector as the substantial investments that will be required are capital-intensive and have long lifetimes. Introducing impact assessments on the expected contribution to long-term objectives (like sustainability and/or security of supply) could incentivise anticipating issues and identifying appropriate solutions (e.g. before the underlying issue becomes an emergency and unsustainable solutions would be the only feasible short-term option).
- **Overall consistency should be ensured between relevant environmental legislation** (e.g. Water Framework Directive, Natura 2000 Directives) and the CEEAG proposal.

Section 4.8: Aid for the security of electricity supply

The proposal is overall in line with the provisions of the Electricity Market Regulation¹. However, it would benefit from removing some discrepancies or clarifying some aspects:

- **The CEEAG should make a clear distinction between market-wide capacity mechanisms and the other targeted aid measures identified under this aid category.** A market-wide capacity mechanism will contribute to sufficient electricity supply, minimising the distortion of competition or trade, while the other targeted instruments, strategic reserves, interruptibility schemes, or network reserves cover only a small part of installed/required capacity of a specific region (§285).
- **All measures for security of electricity supply, such as capacity mechanisms and, where technically feasible, strategic reserves should be open to direct cross-border participation** between capacity providers located in different Member State, as foreseen in the Electricity Regulation. The exemption to this key principle is only valid for strategic reserves, where not technically feasible (§305).

¹ Regulation (EU) 2019/943 on the internal market for electricity

- **The EC should clarify that network reserves are not referring to the provision of “reserve capacity”** (see definition in Art.2(19) of the Electricity Market Regulation) and are not aimed at interfering with the provisions contained in this regulation or in related texts (a.o. the guideline on electricity balancing²) (§321).

Section 4.9: Aid for energy infrastructure

- **The impact of Energy System Integration (ESI) on infrastructure should be duly taken into account in the CEEAG.** Indeed, ESI directly refers to the substitutability of different energy carriers. Infrastructure is also part of the ESI as it is also subject to substitutability even when arranged as traditional “natural monopolies” as in the case of electricity, gas or (potentially in the future) hydrogen. **Therefore, the cumulative conditions to assess whether a natural monopoly excludes distortions on competition must include these ESI-related issues** (§332).
- **The CEEAG proposals should distinguish between aid for infrastructures for gas, for hydrogen, but also blending of hydrogen into natural gas.** For all options, Member States should demonstrate how the projects contribute to the energy transition and do not create long-term carbon lock-in effects (§339). Eurelectric considers that blending should be a temporary solution.

Section 4.10: Aid for district heating or cooling

- **Eurelectric strongly supports an urgent transition away from inefficient fossil-based heating solutions towards full decarbonisation by 2050, at individual building or at district level - where district network exists. Investments in greening such systems should be promoted through State aid,** e.g. by replacing fossil fuel-based heat production through renewables-based heat production as part of a such a system. It is not clear how such cases are addressed in the draft guidelines.
- **The proposed definition of an “energy efficient heating & cooling system” creates uncertainty for potential State aid beneficiaries.** Such a definition will be – according to proposal presented by the European Commission in July 2021³ – subject to significant modifications in framework of the revision of the Energy Efficiency Directive (EED). It is paramount that the definition of heating and cooling system are coherent across the legislative files, in particular between the CEEAGs and the “Fit for 55 package”.
- **Requiring Member States to reach the energy efficiency standard within 3 years following the start of the upgrade works is very ambitious. It should be extended to 5 years.** This is due to ongoing debates around the definition of “energy efficient heating & cooling system” as part of the EED revision but also unclear methodology for calculating the deadline for obtaining the status of an effective district heating system. Also, distribution network owners do not always have the ability to commit to start work on generation facilities (§ 343).

² Commission Regulation (EU) 2017/2195 establishing a guideline on electricity balancing

³ See article 24 paragraph 1 the EED recast proposal COM(2021) 558 final.

Section 4.11: Aid in the form of reductions from electricity levies for energy-intensive users

- The current proposal does not sufficiently incentivise Energy Intensive Users (EIUs) to decarbonise via renewable or low-carbon electrification. **The allocation of aid to EIUs should also take into account the concrete investment plans for decarbonisation through electrification.**

Section 4.12: Aid for coal, peat and oil shale closure

- **While well intended, the CEEAG proposal risks not leading to the stated objective of incentivising coal, peat and oil closure because of “profitability” criteria.** The CEEAG proposal indeed stipulates that aid should be allocated only to “profitable” plants in order to really have a positive environmental effect. However, most conventional plants are currently often either not profitable or operating on the verge of profitability, but Member States do not allow their exit from the market for security of supply reasons in the transition and/or because of the social impact of such closures (§371).
- **The requirement for closure within one year is clearly not realistic: the timeline should be significantly revised** to take account of the necessary timeframe to negotiate, develop, and implement the proper closure programmes and new activities that will foster a just transition and gradual transition away from coal. For instance, the actual awards of closure aid could be split and associated to the completion of milestones. A maximum of [X] years for completing the process could nevertheless be envisaged (§373).

Detailed comments per section

Section 2 – Scope and definitions and Section 3 - Compatibility assessment under article 107(3), point (C), of the Treaty

General comments:

- **Eurelectric welcomes the broadening of the CEEAG scope in order to contribute to the achievement of the redefined objective of common interest referring to the European Green Deal.**
- As mentioned in our response to the public consultation in January 2021, the CEEAG should have a broader scope to cover all the eligible projects and technologies that are affected by market failures and contribute to the effective and efficient decarbonisation of the EU economies. **The guidelines should therefore establish the necessary framework to allow all Member States to support – when needed – all the technologies that can contribute to the achievement of their NECPs, in accordance with EU decarbonisation objectives.**
- The EC CEEAG proposal should however not only help achieve environmental and climate ambitions. **The CEEAG should keep in balance the key three objectives of the energy policy: 1) carbon-neutrality, 2) the resilience and competitiveness of the European industry and 3) the security of supply, while removing subsidies for fossil fuels.**
- In some categories of aid, such as those relating to energy infrastructure or security of supply, the permissible aid intensity was not indicated. Therefore, it may cause some difficulties whether the intensity in these cases should be interpreted as 100%. **To avoid any uncertainties we propose, following the example of the EEAG of 2014, to introduce an annex containing a table summarizing the intensity of aid for its individual purposes.**

Detailed comments:

Paragraph 14: The CEEAG proposal allows the possibility of granting aid to entities which are obliged to reimburse previously granted aid considered illegal and incompatible with the internal market. We support this possibility. **We would however welcome clarification on the meaning of paragraph 14.** It is unclear how the reimbursement could take place, for instance:

- whether the new aid will be (in line with the EC decision) appropriately reduced by the amount of aid to be reimbursed,
- whether the EC will somehow consider when assessing new aid, the fact that another aid has to be reimbursed,
- or any other options.

In the first scenario, it should be clarified that it is the responsibility of the Member State and its administration (incl. national courts) to enforce the recovery and it is not the EC's responsibility.

Paragraph 18: The definition of offshore energy infrastructure in the draft refers only to infrastructure with a dual role (interconnector). This raises doubts as to whether it will be possible to obtain aid for transmission or distribution of offshore renewable electricity from the offshore generation site in the case of grids that do not meet this criterion. This may inhibit the development of offshore investments.

Paragraph 24: As already above-mentioned, when identifying how aid is facilitating the development of an economic activity, we believe that the impact on competitiveness and security of supply should be taken into account by Member States. **The assessment should indeed go beyond the impact on the achievement of objectives of Union climate policy, environmental policy and energy policy.**

Text proposal EU Commission	Eurelectric amendment
24. Member States must also describe if and how the aid will contribute to the achievement of objectives of Union climate policy, environmental policy and energy policy and more specifically, the expected benefits of the aid in terms of its material contribution to environmental protection, including climate change mitigation, or the efficient functioning of the internal energy market.	24. Member States must also describe if and how the aid will contribute to the achievement of objectives of Union climate policy, environmental policy and energy policy and more specifically, the expected benefits of the aid in terms of its material contribution to environmental protection, including climate change mitigation, competitiveness, security of supply or the efficient functioning of the internal energy market.

Paragraph 30: We support the recognised exceptional cases in which aid can have an incentive effect even for projects started before the aid application. **We encourage the EC to implement the same rules in the revised GBER.**

Paragraph 30 (c): The paragraph limits the possibility of granting operational aid to existing assets, provided that aid creates ‘an incentive effect’ resulting in a more environmentally friendly production. An extension of operational aid should be considered when designed in such a way that it does not lead to any market distortions (for instance on a €/MW basis) and if it is in line with the EU Green Deal objectives.

Paragraph 31: We fully support the principle that only aid going beyond Union standards can have an incentive effect and the recognition of the exception. We believe that **it should be supplemented with additional clarifications, as in the case of paragraph 55 of the current EEAG:** “In order not to discourage Member States from setting mandatory national standards which are more stringent than the corresponding Union standards, such positive contribution exists irrespective of the presence of mandatory national standards that are more stringent than the Union standard. This includes for instance measures to improve the water and air quality beyond mandatory Union standards. Such positive contribution also exists in the presence of a mandatory national standard adopted in the absence of Union standards”.

Text proposal EU Commission	Eurelectric amendment
<p>31. The Commission considers that aid granted merely to cover the cost of adapting to Union standards has, in principle, no incentive effect. As a general rule, only aid to go beyond Union standards can have an incentive effect. However, in cases where the relevant Union standard has already been adopted but is not yet in force, aid can have an incentive effect if it incentivizes the realization of the investment before the standard enters into force (see section 4.2.3 and section 4.5.3)</p>	<p>31. The Commission considers that aid granted merely to cover the cost of adapting to Union standards has, in principle, no incentive effect. As a general rule, only aid to go beyond Union standards can have an incentive effect. However, in cases where the relevant Union standard has already been adopted but is not yet in force, aid can have an incentive effect if it incentivizes the realization of the investment before the standard enters into force (see section 4.2.3 and section 4.5.3). <i>In order not to discourage Member States from setting mandatory national standards which are more stringent than the corresponding Union standards, such positive contribution exists irrespective of the presence of mandatory national standards that are more stringent than the Union standard. This includes for instance measures to improve the water and air quality beyond mandatory Union standards. Such positive contribution also exists in the presence of a mandatory national standard adopted in the absence of Union standards.</i></p>

Paragraph 47: We would welcome clarifications from the EC and/or non-binding examples on how credible projects would be identified or defined in the proposed methodology, as a “benchmark” vis-à-vis the targeted project (which would benefit from the aid to close its financial gap). In particular, we would welcome clarifications on how a Member State could “credibly” assess the economic revenues and costs that the beneficiary of a project would “credibly” carry out in the absence of aid.

Paragraph 48: The paragraph describes the criteria of a competitive bidding process that would ensure proportionality of the aid. **The subparagraph d) is critical, as it has led to a downward spiral of the tender volume which leads to less RES being built (endogenous rationing⁴).** While safeguards against insufficient competition are of course necessary, it should be ensured, **that it does not have negative effects on the overall RES development.** For example, in Germany, the reason for undersubscribed bidding is mainly related to problems with permitting. Therefore, Member States should not be forced to implement mechanisms that automatically reduces the tender volume in case of one-time undersubscribed bidding.

⁴ See [Aures “Policy Brief” on “How \(not\) to respond to low competition in renewable energy auctions” \(June 2020\)](#):

Moreover, undersubscribed tenders should not lead to a cancellation of the undersubscribed budget, but to a postponement of the budget to a later period. Reasons for undersubscription should be identified and addressed.

Paragraph 49: We overall support the guiding principle outlined in this paragraph. We think that this approach is valid for investments aids where selection criteria are mainly based on aid amount and therefore underlying prices. However, a **derogation from this approach should be foreseen in the case of operational programmes (OP) implementing Cohesion Policy funds** – in this situation the selection criteria are not only focused on the price aspect, as required by paragraph 49 except in a few exceptional cases, but often also refer to a number of other issues or benefits in relation with social welfare. In OPs there are competitive procedures, but they are not necessarily meeting the conditions of paragraphs 48-49. **In our view, we should still treat competitive procedures in case of cohesion policy operational programmes (which are in line with CPR provisions⁵) as CBPs even if more than 25% of selection criteria concerns non-price aspect of projects.**

Paragraph 54: The paragraph establishes that aid may be awarded concurrently under several aid schemes or cumulated with ad hoc or de minimis aid in relation to the same eligible costs provided that the total amount of aid for an activity or project does not lead to overcompensation or exceed the maximum aid amount allowed under these guidelines (...). **We would welcome clarifications from the EC on what does overcompensation mean in cases where two or more types of aid are granted in two or more CBPs on one project. In addition, cumulation of aid should not be possible when there is a quota or obligation scheme on suppliers or customers, as in this case.** According to the incentive effect criterion, the aid to be compatible must change the behaviour of undertakings, as described in section 3.1.2. In this sense, it is unclear how aid can change such behaviour when a quota or supply obligation has been introduced (either by the EU or national regulations). When there is a quota or supply obligation on a product, the market price of that product reflects the marginal cost of producing it to an amount enough to satisfy the quota or obligation. Thus, if in addition an operating aid or tax reduction is also granted, the market price of the product would decrease accordingly. Therefore, the aid would only entail a redistribution of financial efforts between the suppliers/consumers obliged and whoever is financing the aid (e.g. taxpayers) – i.e. no additional incentive effect.

Paragraph 55: We overall support the provision stating that centrally managed Union funding that is not directly or indirectly under the control of the Member State, does not constitute State aid. Where such Union funding is combined with State aid, it has to be ensured that the total amount of public funding granted in relation to the same eligible costs **does not lead to overcompensation (cumulation). We would welcome further guidance on what does overcompensation/cumulation mean in this context.**

⁵ REGULATION (EU) 2021/1060 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy

Paragraph 65: We would like to see an inclusion of the word “sustainability” in the last sentence of paragraph 65.

Text proposal EU Commission	Eurelectric amendment
<p>65. “...All other things being equal, the closer the aided investment is in time to the relevant target date, the greater the likelihood that its transitory benefits may be outweighed by the possible disincentives for cleaner technologies. The Commission will therefore take into account these possible short and long term negative effects on competition and trade in its assessment.</p>	<p>65. “...All other things being equal, the closer the aided investment is in time to the relevant target date, the greater the likelihood that its transitory benefits may be outweighed by the possible disincentives for cleaner technologies. The Commission will therefore take into account these possible short and long term negative effects on sustainability, competition and trade in its assessment.</p>

Paragraph 69: We would welcome clarifications on what “the Commission will pay particular attention” to exactly means in terms of interlinkages between the CEEAG and the Taxonomy Regulation. As mentioned in our response paper of January, **Eurelectric believes that linking the state aid framework with the EU taxonomy regulation has to be avoided.** As such, the EU taxonomy is helping to facilitate sustainable finance mechanisms: it is contributing to fund projects contributing to the final net-zero decarbonization targets more easily, and ideally at a lower cost (for the investors and ultimately for the consumers). However, in the short to medium term (during the transitional phase), it is premature to link the state aid guidelines to the taxonomy regulation. For instance, the latter does not take a system-wide perspective recognizing the complementarity of different decarbonisation options and sufficiently value the contribution of transition technologies.

Text proposal EU Commission	Eurelectric amendment
<p>Option 1:</p> <p>69. In that balancing exercise, the Commission will pay particular attention to Article 3 of Regulation (EU) 2020/852 of the European Parliament and of the Council, including the “do not significant harm” principle, or other comparable methodologies. Furthermore, as part of the assessment of the negative effects on competition and trade, the Commission may take into account, where relevant, negative externalities of the aided activity where such externalities adversely affect competition and trade between Member States to an extent contrary to the common interest by creating or aggravating market</p>	<p>Option 1:</p> <p>69. In that balancing exercise, notwithstanding the Commission will consider without prejudice Article 3 of Regulation (EU) 2020/852 of the European Parliament and of the Council, including the “do not significant harm” principle, or other comparable methodologies. Furthermore, as part of the assessment of the negative effects on competition and trade, the Commission may take into account, where relevant, negative externalities of the aided activity where such externalities adversely affect competition and trade between Member States to an extent contrary to the common</p>

Text proposal EU Commission	Eurelectric amendment
inefficiencies including in particular those externalities that may hinder the achievement of climate objectives set under EU law.	interest by creating or aggravating market inefficiencies including in particular those externalities that may hinder the achievement of climate objectives set under EU law.

Paragraph 71: Eurelectric fully supports the guiding principles for the assessment of investment in fossil fuels or natural gas projects. The Power Sector is committed to delivering carbon-neutral electricity supply well before 2050.

The irreversible decline of fossil fuels such as natural gas in the EU energy mix⁶, needed to reach the European climate objectives, requires further direct electrification based on renewable and carbon neutral sources. Where this is neither feasible nor efficient, other energy carriers can be used, including renewable and low-carbon gases (biomethane, green hydrogen, etc...).

Gas-fired capacity (running on renewable/low-carbon gases in the long-term) could be instrumental in the short/medium term in securing electricity supply at the right level, to cope with more penetration of intermittent RES generation. This is even more important if the level of electrification is higher than today. **The assessment of investment in gas projects should take the context of energy system integration into account and the contribution to security of supply of renewables and low-carbon gases in the energy transition of some EU regions**, especially those ones that don't have access to hydro or nuclear, depending on national specificities and the changes in their generation mix. As mentioned above, the balancing test between positive and negative effects needs to take into account the need to cope with three different objectives – cost-effective decarbonization, security of supply and cost for consumers.

We would be grateful if the Commission could **clarify what is meant by or what are the key criteria to consider to demonstrate “no lock-in effects” (H2 readiness, phase out plans, etc...)**. From Eurelectric's perspective, in short/medium term, demonstrating the need and contribution of the schemes in an increasingly carbon-neutral energy system, together with hydrogen-readiness in combination with existing plans to ramp-up hydrogen production or deploy other renewable gases would be an appropriate criterion to avoid lock-in effects.

⁶ Our [Decarbonisation Pathway Study](#) foresees that the fossil energy supply will be gradually phased out and represent only ~5% of total energy supply by 2045. Moreover, gas will still account up to ~15% of total installed electricity generation capacity in order to secure system reliability, especially in regions that don't have access to hydro or nuclear, depending on national specificities and the changes in their generation mix.

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

General comments:

- The guidelines should establish the necessary framework to allow all Member States to support – when needed – all technologies that can contribute to the achievement of their NECPs, in accordance with the increased EU decarbonisation objectives. In particular, we call on the European Commission to consider all available technologies that can contribute to those objectives and, at the same time, to take into account national conditions and singularities of electricity generation portfolio, permitting regimes/concessions, environmental constraints and market design. A level playing field shall be the main goal of policy action, technology neutrality, as well as size independency, shall be the baseline for any State Aide measure a MS would see necessary.
- **Regarding storage, we believe that all types of storage, including stand-alone and combined also with renewable power plants, should be explicitly covered in this section 4.1 to reflect their growing role in contributing to the decarbonisation in terms of integration of renewable sources and avoiding curtailment of renewable energy.** A reference should be also made to the article 54 of the Directive 944/2019 to ensure that the procedures for the procurement of storage systems are carried out as market asset and fairly as possible.
In this context, storage should be explicitly mentioned under section 4.1.2 paragraph 74 to reflect the growing importance of storage in supporting the cost-effective system integration of variable renewables and in avoiding curtailment of renewable energy. Finally, clarification regarding the expected contribution from storage to the decarbonisation of the energy system should be clarified.

Detailed comments:

Paragraph 85: The provision requires that estimated amount of aid in terms of GHG emissions will be submitted to public consultation. **It is not clear whether it is the amount of emissions avoided already at the operational stage of the supported project or another indicator. In general, the calculation of avoided GHG emissions can be complex and subject to certain bias depending on the sector concerned and on which type of (life cycle) methodology is used. It is important that estimates are based on the latest research from independent bodies. Moreover, electrification must not be placed at a disadvantage, which could happen if the grid-mix was used for calculations on e.g. electrolysis-based hydrogen or industrial electrification. It is worth noting that GHG emissions occur at the stage of manufacturing components for the construction of low-emission sources or their transport to the project location, and taking into account the emissions from these stages may significantly change the final project rankings.**

Paragraph 90: The possibility to organise technology-specific calls for tender is welcomed, and must be preserved, especially for the development of renewable technologies. Indeed, technology-specific approaches can be required to maintain sufficient momentum for electrification and decarbonisation by 2050.

Paragraph 91: A competitive bidding process is important to limit the risk of overcompensation. This risk of overcompensation should be limited by the set of rules for this competitive process and by fostering participation to this process. If rules are too complex or parameters are ill-calibrated, they could be detrimental to this participation. **As such, addressing the risk of overcompensation of cheaper technologies by focusing only on bid caps might not be sufficient to achieve the targeted objective** (avoiding overcompensation of cheaper technologies). It also depends a.o. on the auction design (e.g. pay-as-bid vs pay-as-clear, differentiated treatment between asset classes and their justification, cross-border participation, etc.). Therefore, one could argue that the discussion on technicalities (like this one – bid cap) should be dropped from the text but included in the assessment of the Commission on a case-by-case basis. In addition, bid caps might rise other types of problems such as the tie of some bids at the level of the cap and the need to define how the capacity that has tied in the offer is allocated.

Text proposal EU Commission	Eurelectric's amendment
<p>Option 1:</p> <p>91. Where multiple categories of beneficiary expected to require a level of support that deviates significantly are put into a single competitive bidding process, Member States should consider the potential for overcompensation of cheaper technologies. This will also be taken into account by the Commission in its assessment. <i>Where appropriate, bid caps may be required to limit the maximum bid from individual bidders in particular categories. Any bid caps should be justified with reference to the quantification for reference projects referred to in points 50 and 51.</i></p> <p>Option 2</p> <p>91. Where multiple categories of beneficiary expected to require a level of support that deviates significantly are put into a single competitive bidding process, Member States should consider the potential for overcompensation of cheaper technologies.</p>	<p>Option 1:</p> <p>91. Where multiple categories of beneficiary expected to require a level of support that deviates significantly are put into a single competitive bidding process, Member States should consider the potential for overcompensation of cheaper technologies. This will also be taken into account by the Commission in its assessment. <i>Where appropriate, bid caps may be required to limit the maximum bid from individual bidders in particular categories. Any bid caps should be justified with reference to the quantification for reference projects referred to in points 50 and 51.</i></p> <p>Option 2:</p> <p>91. Where multiple categories of beneficiary expected to require a level of support that deviates significantly are put into a single competitive bidding process, Member States should consider the potential for overcompensation of cheaper technologies. This will also be taken into account by the</p>

Text proposal EU Commission	Eurelectric's amendment
This will also be taken into account by the Commission in its assessment. Where appropriate, bid caps may be required to limit the maximum bid from individual bidders in particular categories. Any bid caps should be justified with reference to the quantification for reference projects referred to in points 50 and 51.	Commission in its assessment. Where appropriate, revenue caps may be required to limit the maximum revenue from individual bidders in particular categories. Any revenue caps should be justified with reference to the quantification for reference projects referred to in points 50 and 51.

Paragraph 92: Regarding exceptions from the requirement to allocate aid through a competitive bidding process, the Commission proposes to decrease the exemption threshold from 1 MW to 400 kW for electricity generation or storage projects. As the detrimental effects on RES development of a lower threshold would outweigh the potential benefits brought by the bidding process in terms of distortion of competition, **Eurelectric asks to maintain the existing thresholds, set at 1 MW** as a general rule and up to 6 MW or 6 generation units for wind energy. However, it has been observed that, in some countries, circumvention by splitting the units to avoid competitive procedure takes place. **Therefore, Member States could decide to maintain stricter limits for these kinds of plant's annual installed capacity..**

Paragraph 93: It is important to consider that the funding gap analysis (especially for nascent decarbonisation technologies/alternatives) is subject to significant uncertainties. In fact, the funding gap commonly depends on variables that are very hard to forecast/are subject to significant estimation error (e.g. future price of EUAs, utilisation/production level, etc.). In addition, there is a clear information asymmetry between the Member States / Commission and the project developers. Hence, in order to avoid excessive compensation due to any of the issues mentioned (uncertainty, estimation error, information asymmetry), claw-back mechanisms as those described in point 53 must be put in place. As a reference, see what is proposed in point 280 for “aid in the form of environmental protection in the form of reductions in taxes or parafiscal levies”.

Text proposal EU Commission	Eurelectric's amendment
93. For an individual aid award without a competitive bidding process, Member States must justify the proposed aid levels based on an individual business plan for the specific project to be aided, including all the elements listed in points 50 and 51	93. For an individual aid award without a competitive bidding process, Member States must justify the proposed aid levels based on an individual business plan for the specific project to be aided, including all the elements listed in points 50 and 51. <i>In addition, where the funding gap analysis is subject to significant uncertainties, including the future production or utilization level or the value of EUAs in the ETS, the Member State must conduct an ex post monitoring to verify the assumptions made about the level of aid</i>

Text proposal EU Commission	Eurelectric's amendment
	<i>required and put in place a claw-back mechanism, as set out in point 53.</i>

Paragraph 98: The paragraph acknowledges that “the methodology should usually be similar for all measures promoted by a Member State”, referring to the EU Innovation Fund GHG emission avoidance methodology. However, this methodology does not give clear indication on hidden emissions. **In general, the calculation of avoided GHG emissions can be complex and subject to certain bias depending on the sector concerned and on which type of (life cycle) methodology is used.** It is important that estimates are based on the latest research from independent bodies. Moreover, electrification must not be placed at a disadvantage, which could happen if the grid-mix was used for calculations on e.g. electrolysis-based hydrogen or industrial electrification.

Text proposal EU Commission	Eurelectric's amendment
98. The subsidy per tonne of CO2 equivalent emissions avoided must be estimated for each beneficiary or reference project, and the assumptions and methodology for that calculation provided. To the extent possible, this should seek to identify the net emissions reduction from the activity, taking into account life-cycle emissions created or reduced.	98. The subsidy per tonne of CO2 equivalent emissions avoided must be estimated for each beneficiary or reference project, and the assumptions <i>and methodology, based on the latest research from independent bodies,</i> for that calculation provided. To the extent possible, this should seek to identify the net emissions reduction from the activity, taking into account life-cycle emissions created or reduced.

In addition, measures that provide carbon-neutral solutions and those that allow partial decarbonisation (e.g. CCS/CCU) lead to different results in cutting emissions. Therefore, when comparing such solutions, the additional costs needed to complement the effects of the partial decarbonisation solutions and deliver on the residual decarbonisation should be taken into account.

Paragraph 100: The paragraph asserts that in order to avoid the risk of double subsidies and ensure the verification of the greenhouse gas emissions reductions, aid for the decarbonisation of industrial activities must reduce the emissions directly resulting from that industrial activity. Aid for improvements of the energy efficiency of industrial activities must improve energy efficiency of the beneficiaries' activities. **We would welcome clarification from the EC on what 'directly resulting' means in the expression “aid for the decarbonisation of industrial activities must reduce the emissions directly resulting from that industrial activity”.** Is it related to the activities on-site ?. **The provision should be further developed to clarify on the methodologies that Member States can use to make such an assessment.** This would give the power sector and the industrial sectors that are considering investments in electrification/hydrogen more certainty.

Text proposal EU Commission	Eurelectric's amendment
	<p><i>New): 100a. For aid measures or schemes that include the electrification of industrial activities, including the production of low-carbon or renewable hydrogen with an electrolyser, Member States shall provide the methodology and assumptions used for evaluating the greenhouse gas emissions reductions directly resulting from electrification.</i></p> <p><i>For example, the following methodology options may be considered:</i></p> <ul style="list-style-type: none"> <i>a. evaluating emissions based on the greenhouse gas emissions of the electricity mix within a bidding zone;</i> <i>b. evaluating emissions based on aid beneficiaries demonstrating to the Member State that the industrial installation is exclusively connected to a carbon neutral electricity production installation via, for example, a direct line or a power purchasing agreement;</i> <i>c. evaluating emissions based on aid beneficiaries demonstrating the purchase and redemption of guarantees of origin covering electricity use.</i>

Paragraph 101: To avoid a budget being allocated to projects that are not realised, Member States must demonstrate that reasonable measures are taken to ensure that projects granted aid will actually be developed, e.g. setting clear deadlines for project delivery, checking project feasibility as part of prequalification for receiving aid, requiring collateral to be paid by participants, or monitoring project development and construction. **Under this provision, we recommend introducing regulatory measures to streamline, rationalise and accelerate authorisation procedures**, which would be tangible and effective immediately both for investment projects needed to secure the energy transition (keeping in mind objectives for decarbonization, security of supply and cost competitiveness) and for those that already exist and need to be modernised.

Paragraph 102: The principle of exposing beneficiaries of state aid to risks they can contribute to managing is reasonable. However, it is crucially important to assess and determine what those risks are, and what they are not. Notably, electricity generators cannot reasonably be expected to have any meaningful influence on the availability of transmission infrastructure. Both build-out and operation of transmission assets is based on decisions made by transmission system operators under rules developed by politicians and regulators. It would thus be unreasonable to

expose electricity generators to this particular risk. Therefore, we propose the following amendment to paragraph 102.

Text proposal EU Commission	Eurelectric's amendment
102. Beneficiaries of the measure should be exposed to risks that they can contribute to managing, for example risks associated with the curtailment of renewable energy linked to periods of excess production or to insufficient transmission.	102. Beneficiaries of the measure should be exposed to risks that they can contribute to managing, for example risks associated with the curtailment of renewable energy linked to periods of excess production or to insufficient transmission.

Paragraph 104: We welcome the move towards a more market-based and cost-efficient design of support for RES generation and integration of this generation into the market. Provisions in paragraph 104 will help to cease market distortion caused by operating aid that incentivises electricity generation at negative wholesale market prices. However, it should be noted, that in the case of CHP plants that produce both heat and power, their marginal costs are also influenced by the heat they produce, which makes this provision very difficult to apply for them.

Paragraph 106: Access to infrastructures is the basis for competition – this is in fact one of the reasons why infrastructures are regulated under a TPA. In this sense, aid for dedicated infrastructures cannot turn into a barrier to effective competition. In this sense, a more assertive approach is needed in this paragraph and all the criteria listed must be strictly fulfilled. Furthermore, it is important that dedicated infrastructures are in any case opened to third parties, especially those that are clean energy producers – i.e. dedicated infrastructures must not turn into a barrier for supply-side competition. In any case, such third-party access cannot undermine the decarbonisation/RES deployment that is linked to the objective of the aid (i.e. strictly speaking, the objective of the aid is not decarbonisation / RES deployment itself but to incentivize the development of a certain economic activity).

Text proposal EU Commission	Eurelectric's amendment
106. For instance, where the infrastructure initially connects only a limited number of users, the distortive effect can be mitigated where it is part of a plan to develop a wider Union network on the basis of the following criteria: (a) the accounting for the infrastructure should be separated from any other activity and costs of access and usage made transparent; (b) unless this undermines the attainment of	106. For instance, w where the infrastructure initially connects only a limited number of users, the distortive effect can must be mitigated where it is part of a plan to develop a wider Union network on the basis of the following cumulative criteria: (a) the accounting for the infrastructure should be separated from any other activity and costs of access and usage made transparent;

Text proposal EU Commission	Eurelectric's amendment
<p>the objective of the aid, aid should be subject to the opening up of the infrastructure to third parties at fair, reasonable and non-discriminatory terms (including public calls for connection requests at equivalent conditions);</p> <p>(c) the advantage that the beneficiaries derive until such wider development occurs may need to be offset, for instance by way of contributing to the further extension of the network;</p> <p>(d) the advantage derived by the dedicated users may need to be limited and/or shared with other players.</p>	<p>(b) unless this undermines the attainment of <i>the decarbonisation or renewable energy deployment linked to</i> the objective of the aid, aid should be subject to the opening up of the infrastructure to third parties, <i>especially energy producers</i>, at fair, reasonable and non-discriminatory terms (including public calls for connection requests at equivalent conditions);</p> <p>(c) the advantage that the beneficiaries derive until such wider development occurs may need to be offset, for instance by way of contributing to the further extension of the network;</p> <p>(d) the advantage derived by the dedicated users may need to be limited and/or shared with other players.</p>

Paragraph 107: A disruption of heat supplies, would in very many cases not be covered by additional production of renewable electricity. For instance, large scale heat pump penetration is still limited in district heating networks across Europe. In areas covered by district heating, it therefore seems unclear how removing incentives for heat production from sustainable biomass in certain hours would not lead to increased use of fossil fuels in these hours in the same district heating area. We would like to ask for clarification on how paragraph 107 would be implemented so that it does not lead to increased use of fossil fuels in certain areas?

Paragraph 108: One issue must be highlighted: decarbonisation is about using cleaner alternatives combined with more energy efficient alternatives. This is important in the context of energy system integration in which competition between energy carriers is possible – e.g. competition between direct electrification and other alternatives, including indirect electrification.

Text proposal EU Commission	Eurelectric's amendment
<p>108. Aid for decarbonisation 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 solutions. [...]</p>	<p>108. Aid for decarbonisation may unduly distort competition where it displaces investments into cleaner alternatives <i>and more energy efficient alternatives</i>, 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 solutions. [...]</p>

Paragraph 122 (and §135): We propose that aid for adapting to EU standards that have been adopted but are not yet in force should have an incentive effect if the investment is carried out and completed at least 12 months before the EU standards come into force, and not 18 months

as currently proposed. Our experience shows that early adaptation to the standards is associated with a significant increase in operating costs, which may discourage the use of this type of support.

Section 4.3. Aid for Clean Mobility

General comments:

- **Electrification of transport through investments in e-mobility and re-charging infrastructures should be considered paramount in achieving the European Green Deal ambitions.** Therefore, Eurelectric welcomes that the proposal for the revised EEAG covers and supports such developments across Europe.

Detailed comments:

Paragraph 162. With regarding to aid to vehicles using blends of biogas or RFNBOs:

First, the Union database described in Directive 2018/2001 should be used to demonstrate the Member States' commitment to use a minimum % in the blend. This is needed in order to make sure that the commitments are actually fulfilled (i.e. not just "greenwashing" based on e.g. not-robust-enough Guarantees of Origin).

Second, Member States' commitments should be monitored and reported to the Commission. There should also be consequences in case a commitment is not fulfilled: at least immediate cease of the aid scheme in question and recover any aid granted from that moment.

Text proposal EU Commission	Eurelectric's amendment
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 ⁷¹ . 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 non-biological origin (minimum 20%).	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 ⁷¹ . 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 non-biological origin (minimum 20%). <i>The Union database described in Directive 2018/2001 shall be used to demonstrate such commitment, which must be carried out by an independent entity, who shall report to the Member State</i>

Text proposal EU Commission	Eurelectric's amendment
	<i>and the Commission. In case the commitment is not fulfilled, the Member State shall immediately cease the aid scheme in question. Aid granted from the moment the commitment is not fulfilled will have to be recovered from the beneficiary.</i>

Paragraph 168: The paragraph sets that Member States may grant aid to address those residual market failures and support the deployment of recharging and refuelling infrastructure. Other elements should be considered:

- The appropriate alignment between the proposed AFI Regulation and EPB Directive in addition to TENT-Regulation is of crucial importance to ensure the deployment of the proper charging infrastructure for the different use cases and locations.
- Targets for publicly accessible charging points for EVs need to be smart and grounded on projections for the development of the market, distinct use cases, per type of vehicle and current status of EV charging infrastructure roll-out in Member States. However, in many instances, there is no long term plan of what is expected or what should be deployed across private, commercial, and public sites over the next decade in order to respond to EV charging needs.
- Setting minimum binding targets for publicly accessible charging points, particularly in countries and regions where the deployment of charging infrastructure is most needed to meet the current demand of ever-growing EV fleets will provide long term predictability which will encourage private investment and ensure a more consistent development of the EV market throughout Europe.
- Nevertheless, such binding minimum targets per type of vehicle must be structured based on National Plans, to deliver long-term vision and strategy on how the e-mobility situation should progress in each Member State. While covering for residual market failure should be the key element, access to aid could also be based on aspects such as:
 - Minimum installed capacity model.
 - Robust projections for the development of the market which take into account the different charging needs, state of fleet, travel habits and domestic/professional situations of EV drivers;
 - A broad and inclusive outlook to serve all use cases for EV charging required to serve all use cases (e.g. including private charging) which should be outlined in comprehensive national charging rollout plans subject to oversight by the EC.
- Such plans play an important role in ensuring that the binding minimum targets for publicly accessible infrastructure are achieved in a strategic way that delivers infrastructure where it is needed, where it makes sense and where it can benefit the user and the market. By following a common methodology (by looking to the EV growth projections, minimum capacity installed, use cases, etc), such plans would allow Member States to assess what would be their needs in regard to EV charging infrastructure roll-out, and provide a more accurate and regionally and locally fact-based view of possible market failures.

Text proposal EU Commission	Eurelectric's amendment
<p>168. Directive 2014/94/EU of the European Parliament and of the Council creates a common framework of measures for the deployment of alternative fuels infrastructure for transport in the Union and sets provisions for the Member States for the deployment of such infrastructure. Moreover, other policies promoting the uptake of clean transport vehicles may already provide for investment signals for the deployment of recharging and refuelling infrastructure. However, those policies alone may not be sufficient to address in full the identified market failures. Member States may therefore grant aid to address those residual market failures and support the deployment of recharging and refuelling infrastructure.</p>	<p>168. Directive 2014/94/EU of the European Parliament and of the Council creates a common framework of measures for the deployment of alternative fuels infrastructure for transport in the Union and sets provisions for the Member States for the deployment of such infrastructure. Moreover, other policies promoting the uptake of clean transport vehicles may already provide for investment signals for the deployment of recharging and refuelling infrastructure. However, those policies alone may not be sufficient to address in full the identified market failures. Member States may therefore grant aid to address those residual market failures, <i>as identified in the MS National Plans for the roll-out of such infrastructure and taking into account EV growth projections, charging behaviour, charging power (AC/DC), location vis-a-vis grid capabilities, demographic conditions, thus supporting the deployment of recharging and refuelling infrastructure.</i></p>

Paragraph 171: The paragraph stipulates that the Member State must verify the necessity of aid to incentivise the deployment of recharging or refuelling infrastructure of the same category by means of an *ex ante* open public consultation or an independent market study. In particular, the Member State must verify that similar infrastructure is not likely to be developed on commercial terms in the short term. **Eurelectric fully supports the requirement for an *ex ante* open public consultation** to feed in the Member state's assessment whether state aid is needed to incentivise the deployment of recharging or refuelling infrastructure. Such public consultation will allow market agents to share their views on the roll-out of infrastructure deployment. In that perspective, an independent market study can indeed be an important tool, but giving voice to the entities that are at the forefront of the electric mobility sector will grant a rational and business-oriented view on the needs and gaps that currently hinder a faster development of electric mobility. Nevertheless, the public consultation process should not lead to excessively long and burdensome processes.

Paragraph 172: The paragraph stipulates that a Member State may consider the market penetration of the clean transport vehicles that such infrastructure would serve may be considered when assessing the necessity of aid for the deployment of recharging and refuelling infrastructure for zero-emission and clean transport. **In our view, Member States could be more inclusive when assessing the necessity of aid for the deployment of EV charging infrastructure and could also consider other relevant technical and administrative aspects**

such as:

- As for EV charging infrastructure, share of AC (normal) and DC (fast or ultrafast) charging;
- Commute patterns, particularly in urban centres;
- Public parking for e-charging and correspondent e-license fees;
- Expected growth of EV market and share of private and public charging;
- Grid reinforcements as well as integration of storage solutions, promoting and easing the use of RES generation for transport.

Text proposal EU Commission	Eurelectric's amendment
<p>172. When assessing the necessity of aid for deployment of recharging and refuelling infrastructure for zero-emission and clean transport vehicles that is open for access by third parties, including publicly accessible recharging and refuelling infrastructure, the market penetration of the clean transport vehicles that such infrastructure would serve may be considered.</p>	<p>172. When assessing the necessity of aid for deployment of recharging and refuelling infrastructure for zero-emission and clean transport vehicles that is open for access by third parties, including publicly accessible recharging and refuelling infrastructure, the market penetration of the clean transport vehicles that such infrastructure would serve, <i>as well as other technical and administrative aspects relevant to the implementation of such infrastructure, such as, but not limited to, EV growth projections, charging behaviour, charging power (AC/DC), location vis-a-vis grid capabilities, demographic conditions</i>), may be considered.</p>

Paragraph 179: The paragraph establishes that the design of competitive bidding processes should favour renewable electricity or renewable hydrogen. However, electrification is key to achieve carbon neutrality and should be the first choice for the EU to meet the 2030 and 2050 objectives. Therefore, we believe that bidding schemes should allow for supporting all carbon-neutral electricity and hydrogen produced by carbon-free electricity via electrolysis.

Paragraph 182: The paragraph stipulates that the basic aid intensity must not exceed 30 % of the eligible costs or 40 % of the eligible costs where the recharging or refuelling infrastructure supplies only renewable electricity or renewable hydrogen respectively. **Eurelectric would welcome clarifications on why basing the aid intensity only on 30% or 40% of eligible cost?** In our view, the percentage should be higher in order to ensure a proper deployment of recharging infrastructure, including in sparsely populated areas.

Paragraph 189: We fully support the provisions aiming at ensuring a non-discriminatory access to users of recharging or refuelling infrastructures, including, as appropriate, in relation to tariffs, authentication and payment methods and other terms and conditions of use. Some background info:

- The development of e-mobility across the single market depends on open interoperable technology and communication protocols, to which non-discriminatory and uniform

communication protocols in EV charging infrastructure are fundamental to ease charging experience for users, regardless of charging networks and regions.

- Open protocols are necessary to avoid closed ecosystems and to encourage and accelerate the uptake of EVs across the EU, and that publicly available charging stations allow users to charge and pay on an ad hoc basis.
- A harmonized approach will ensure that EV charging infrastructure will be deployed in a way that guarantees a cross-border and seamless transition to e-mobility.
- Last, as for public tenders related to public charging infrastructure, they must be granted based on clear, non-discriminatory and open tender requirements and procedures, to encourage an open market, access for new players, fair competition and minimum SLAs.

Paragraph 204: As part of resource efficiency aid and to promote the transition to a circular economy, **the supported investment must not correspond to an economically viable practice.** Accordingly, a process or processes by which waste or other products, materials or substances are prepared for re-use or recycling, or recycled, **may not fit with an economically viable practice or established commercial practice.** We would like to know the intention of the Commission to introduce such a restriction and how it is applied in practice.

In our opinion, there are no contraindications for granting aid as part of an economically profitable practice in the event that such aid leads to positive environmental effects. Criteria to determine whether a practice is economically viable have not been defined and this area may pose many interpretative doubts, e.g. in the area of determining the relevant market for profitability assessment. If they were to be maintained, they would have to be made more detailed.

Section 4.6: Aid for the remediation of contaminated sites, for the rehabilitation of natural habitats and ecosystems and for biodiversity and nature-based solutions

General comments:

- The State aid assessment process could benefit from considering additional externalities, especially based on a forward-looking view and not only on a short-term perspective (e.g. risk of carbon lock-in in case of too myopic approach). It is important to reflect how State aid policy could shape some incentive for Member States and investors to anticipate the long-term targets. This is even more important in the electricity sector as the substantial investments that will be required are capital-intensive and have usually long lifetimes. **Introducing some impact assessment on the expected contribution to long-term objectives (like sustainability and/or security of supply) could incentivise to anticipate issues and to identify appropriate solutions in due time** (e.g. before the underlying issue becomes an emergency and unsustainable solutions would be the only feasible short-term option).
- **Overall consistency should be ensured between relevant environmental legislation (e.g. Water Framework Directive, Natura 2000 Directives) and the CEEAG proposal.**

Detailed comments:

Paragraph 250: We support the view of the Commission to broaden the understanding of “environmental damage”, “rehabilitation” and “protection and restoration” and make all affected actions eligible for State aid.

Paragraph 256: Among the eligible costs, also cost for scientific development of measures shall be included for the remediation of environmental damage, for rehabilitation, for protection and restoring biodiversity as well as for implementing nature-based solutions for climate change adaptation.

Section 4.8 Aid for the security of electricity supply

The proposal contained in Section 4.8 is overall in line with the provisions of the Electricity Market Regulation⁷. However, it would benefit from removing some discrepancies or clarifying some aspects.

General comments:

- Regarding firm flexible capacities (generation, storage, demand-side management) to respond to an increasing share in renewable electricity generation and ensure security of supply, State aid rules should be technology neutral. New renewable, firm and flexible capacity needs to be developed now to replace fossil fuels and thereby preserve security of supply while progressing towards carbon-neutrality in the longer term. **In order to guarantee a required level of reliability standard, different complementary flexibility options and technologies are needed (including deployment and repowering of hydropower including reservoir and pumped storage plants, battery storage, demand side response, renewable and low-carbon gases, etc...), but market failures are in some cases currently still preventing the needed investments to materialize and this needs to be considered by the Commission in the frame of the State Aid rules.**

Detailed comments:

Taxonomy of aid measures aimed at increasing security of electricity supply

Paragraph 285: It is important to ensure consistency with the Electricity Market Regulation, the sector inquiry on capacity mechanisms⁸ (see e.g. Figure 22 Taxonomy of capacity mechanism models) and earlier decisions on capacity mechanisms.

First, in the compatibility assessment, the EC should make a clear distinction between market-wide capacity mechanisms and the other targeted aid measures identified under this aid category.

A market -wide capacity market will contribute to ensure sufficient electricity supply minimising the distortion of competition or trade in the Internal electricity market. On the contrary, the other targeted instruments, strategic reserves, interruptibility schemes, network reserve cover only a small part of installed/required capacity or a specific region.

Second, it should be clarified that network reserves are not referring to the provision of “reserve capacity” (see definition in Art.2(19) of the Electricity Market Regulation) and are not aimed at interfering with the provisions contained in this regulation or in related texts (a.o. the guideline on electricity balancing⁹).

⁷ Regulation (EU) 2019/943 on the internal market for electricity

⁸ Commission Staff Working Document, Final Report of the Sector Inquiry on Capacity Mechanisms, SWD(2016) 385 final

⁹ Commission Regulation (EU) 2017/2195 establishing a guideline on electricity balancing

Third, strategic reserves should be explicitly mentioned in the enumeration, as they are also mentioned later in e.g. Recital (321). Also, in the decision on the German network reserves¹⁰, one can read that “(...) the Commission considers the Network Reserve to be a capacity mechanism in the form of a strategic reserve with a particular, regional function (...)”¹¹. This illustrates again the importance of having an explicit mention of strategic reserves: network reserves that are not reserve capacity and aim to treat the insufficiency of electricity transmission and distribution networks could be considered as a well-identified subset of strategic reserves.

Text proposal EU Commission	Eurelectric’s amendment
<p>285. This Section covers compatibility rules for aid measures aimed at increasing the security of electricity supply. This includes capacity mechanisms and interruptibility schemes for dealing with long and short-term security of supply issues resulting from market failures preventing sufficient investment in electricity generation capacity, storage or demand response, as well as network reserves which aim to treat the insufficiency of electricity transmission and distribution networks.</p>	<p>285. This Section covers compatibility rules for aid measures aimed at increasing the security of electricity supply. This includes capacity mechanisms (including strategic reserves) and interruptibility schemes for dealing with long and short-term security of supply issues resulting from market failures preventing sufficient investment in electricity generation capacity, storage or demand response, as well as network reserves that are not reserve capacity and aim to treat the insufficiency of electricity transmission and distribution networks.</p>

Paragraph 295: We welcome the possibility of using several capacity mechanisms in parallel. This is a very positive development that will facilitate the management of constraints related to the increasing share of variable energy sources.

Wholesale and retail market design fit for purposes

Paragraph 299: Eurelectric would like to point out some additional elements which might cause or exacerbate the security of electricity supply problem:

- Consumers (households, industrials, etc.) might not be active enough on the electricity markets and might not participate actively a.o. to demand response schemes;
- Additional charges and/or regulatory interventions (e.g. proposed carbon claw-back mechanism in Spain) targeted at some technologies or market participants (e.g. units delivering outright power).

Investment in network assets and security of supply

Paragraph 301: Eurelectric would like to remind that investments in network assets are a key element to ensure security of electricity supply, but only if enough firm capacity is available on the other side of the network element.

¹⁰ State aid No. SA.42955 (2016/N-2) – Germany, Network Reserve, paragraph (48)

¹¹ State aid No. SA.42955 (2016/N-2) – Germany, Network Reserve, recital (48)

Cross-border participation

Paragraph 305: Art.26(1) of the Electricity Market Regulation¹² reads as follows: “Capacity mechanisms other than strategic reserves and where technically feasible, strategic reserves shall be open to direct cross-border participation of capacity providers located in another Member State, subject to the conditions laid down in this Article.”. **The proposal is not in line with this Article as the exemption for cross-border participation is only applicable to strategic reserves where not technically feasible.** All other capacity mechanisms should be open to cross-border participation. The proposed amendment aims at correcting the scope of the exemption for cross-border participation.

Text proposal EU Commission	Eurelectric’s amendment
305. Where technically feasible , measures for security of electricity supply must be open to direct cross-border participation of capacity providers located in another Member State. Member States must ensure that foreign capacity capable of providing equivalent technical performance to domestic capacities has the opportunity to participate in the same competitive process as domestic capacity. Member States may require foreign capacity to be located in a Member State that has a direct network connection with the Member State applying the measure. The relevant rules set out in Article 26 of Regulation (EU) 2019/943 must also be complied with.	305. Where technically feasible Measures for security of electricity supply, capacity mechanisms other than strategic reserves and where technically feasible, strategic reserves must be open to direct cross-border participation of capacity providers located in another Member State. Member States must ensure that foreign capacity capable of providing equivalent technical performance to domestic capacities has the opportunity to participate in the same competitive process as domestic capacity. Member States may require foreign capacity to be located in a Member State that has a direct network connection with the Member State applying the measure. The relevant rules set out in Article 26 of Regulation (EU) 2019/943 must also be complied with.

Design principles for aid measures

Text proposal EU Commission	Eurelectric’s amendment
321. For strategic reserves and any other measures where capacity is held outside the market , to ensure market price formation is not distorted the following additional cumulative requirements apply: (a) the resources of the measure are to be dispatched only if the transmission system operators are likely to exhaust their balancing	321. For strategic reserves, network reserves and any other measures where capacity is held outside the market , to ensure market price formation is not distorted the following additional cumulative requirements apply: (a) the resources of the measure are to be dispatched only if the transmission system operators are likely to exhaust their balancing resources to establish an equilibrium between

¹² Regulation (EU) 2019/943 on the internal market for electricity

Text proposal EU Commission	Eurelectric's amendment
<p>resources to establish an equilibrium between demand and supply;</p> <p>(b) during imbalance settlement periods where resources in the measure are dispatched, imbalances in the market are to be settled at least at the value of lost load¹² or at a higher value than the intraday technical price limit¹³, whichever is higher;</p> <p>(c) the output of the measure following dispatch is to be attributed to balance responsible parties through the imbalance settlement mechanism;</p> <p>(d) the resources in the measure are to be held outside the energy markets for at least the duration of the contractual period.</p>	<p>demand and supply <i>or, in the case of network reserves, only if all market-based options for addressing the insufficiency in the electricity transmission or distribution network have been exhausted by system operators;</i></p> <p>(b) during imbalance settlement periods where resources in the measure are dispatched, imbalances in the market are to be settled at least at the value of lost load or at a higher value than the intraday technical price limit, whichever is higher;</p> <p>(c) the output of the measure following dispatch is to be attributed to balance responsible parties through the imbalance settlement mechanism;</p> <p><i>(d) the resources taking part in the measure are not to receive remuneration from the wholesale electricity markets or from the balancing markets;</i></p> <p>(e) the resources in the measure are to be held outside the energy markets for at least the duration of the contractual period.</p>
<p>The proposed amendment aims at covering explicitly network reserves and at ensuring consistency with Art.22(2) of the Electricity Market Regulation¹³, which is more prescriptive than the proposal (see item (d)). Furthermore, the requirement referred to in point (a) shall be without prejudice to the activation of resources before actual dispatch in order to respect the ramping constraints and operating requirements of the resources. The output of the measure during activation shall not be attributed to balance groups through wholesale markets and shall not change their imbalances.</p>	

¹³ Regulation (EU) 2019/943 on the internal market for electricity

Text proposal EU Commission	Eurelectric's amendment
<p>323. Security of electricity supply measures should not:</p> <ul style="list-style-type: none"> (a) create undue market distortions nor limit cross-zonal trade; (b) reduce incentives to invest in interconnection capacity – for example by reducing congestion revenue for existing or new interconnectors; (c) undermine market coupling, including intra-day and balancing markets; (d) undermine investment decisions on capacity which preceded the measure. 	<p>323. Security of electricity supply measures should not:</p> <ul style="list-style-type: none"> (a) create undue market distortions nor limit cross-zonal trade; (b) reduce incentives to invest in an efficient level of interconnection capacity – for example by unduly reducing congestion revenue for existing or new interconnectors; (c) undermine market coupling, including intra-day and balancing markets; (d) undermine investment decisions on capacity which preceded the measure.
<p>Security of electricity supply measures are needed because of market failures that lead to a level of reliability lower than efficient, which in turn lead to more frequent-than-efficient high-priced scarcity events. This translates into congestion rents higher than efficient. Capacity mechanisms ensure that the capacity available in the market provides an efficient level of reliability, thus bringing the frequency of the high-priced scarcity events back to its efficient level. This translates into congestion rents also brought back to their efficient level. In other words, in an electricity system subject to an adequacy concern, more-frequent-than-efficient high-priced scarcity events produce higher-than-efficient congestion, thus creating an incentive to overinvest in interconnection capacity. A capacity mechanism corrects this situation.</p>	

Cost of security of supply measure

Paragraph 324: It is important to emphasize that the cost of security of supply measure is transferred to (and borne by) the end-consumers. This transfer should reflect the contribution of the end-consumers for the need to the measure. Consumers are able to manage (and decrease) this cost for security of electricity supply by being active on the markets via e.g. demand response, but it depends upon quantity and quality of the products and tools available to them.

Security of electricity supply & gas-fired assets

Paragraph 326: Gas-fired capacity¹⁴ (readily equipped to be able to run on renewable/low-carbon gases) could be instrumental in the short/medium term in securing electricity supply at

¹⁴ Our [Decarbonisation Pathway Study](#) foresees that the fossil energy supply will be gradually phased out and represent only ~5% of total energy supply by 2045. Moreover, gas will still account up to ~15% of total installed electricity generation capacity in order to secure system reliability, especially in regions that don't have access to hydro or nuclear, depending on national specificities and the changes in their generation mix.

the right level, to cope with more penetration of intermittent RES generation. This is even more important if the level of electrification is higher than today. One should therefore keep in mind in the balancing test between positive and negative effects the need to cope with three different objectives –decarbonization, security of supply and cost for consumers.

4.9 Aid for energy infrastructure

The Commission should pay particular attention, from a State aid point of view, to the challenges arising from the need to integrate energy from different energy sources (DER – distributed energy sources as one of the main elements of decarbonisation) mainly into the DSO area but also in the transmission system.

Moreover, we welcome the further clarifications introduced by EC regarding the need for significant investment and upgrading of electricity infrastructure to be made by DSOs going forward. Eurelectric’s study, [Connecting the Dots](#), shows indeed that DSOs will need €375-425 billion of investments by 2030, a 50-70% increase relative to the last decade, largely driven by the ongoing energy transition. Thus, it is crucial that decentralised projects can apply for PCI status where they offer replicability across the EU or synergies for Member States, such as smart electricity grids projects. This would allow them to benefit more easily from European public funding, such as the Connecting Europe Facility, to avoid a socially unacceptable increase in the network costs paid by users.

In this context and in line also with the [Eurelectric’s position on the TEN-E Regulation proposal](#), the Commission should consider adopting appropriate measures to incentivize, where needed, the use of public funding for smart electricity grid projects and prevent the current under-utilisation of public funding (e.g. in the last PCI list, only 6 projects related to smart electricity grids are listed).

Text proposal EU Commission	Eurelectric’s amendment
<p>328. In order to meet the Union’s climate targets, significant investment and upgrading of energy infrastructure will be required. A modern energy infrastructure is crucial for an integrated energy market that meets climate targets while ensuring security of supply of in the Union. Adequate energy infrastructure is a necessary element of an efficient energy market. Improving energy infrastructure enhances system stability, resource adequacy, integration of different energy sources and energy supply in under-developed networks.</p> <p>329. Where market operators cannot deliver the infrastructure needed, State aid may be necessary in order to overcome market failures and to ensure that the Union’s considerable infrastructure needs are met. One market failure that may arise in the field of energy infrastructure is related to problems of</p>	<p>328. In order to meet the Union’s climate targets, significant investment and upgrading of energy infrastructure will be required. A modern energy infrastructure is crucial for an integrated energy market that meets climate targets while ensuring security of supply of in the Union. Adequate energy infrastructure is a necessary element of an efficient energy market. Improving energy infrastructure enhances system stability, resource adequacy, integration of different energy sources and energy supply in under-developed networks.</p> <p>329. Where market operators cannot deliver the infrastructure needed, State aid may be necessary in order to overcome market failures and to ensure that the Union’s considerable infrastructure needs are met. One market failure that may arise in the field of energy infrastructure is related to problems of coordination. Diverging interests among</p>

Text proposal EU Commission	Eurelectric's amendment
<p>coordination. Diverging interests among investors, uncertainty about the collaborative outcome and network effects may prevent the development of a project or its effective design. At the same time, energy infrastructure may generate substantial positive externalities, whereby the costs and benefits of the infrastructure may occur asymmetrically among the different market participants and Member States. The Commission therefore considers that aid to energy infrastructure can be beneficial to the internal market by contributing to addressing these market failures. This is particularly true for infrastructure projects having a cross-border impact such as Projects of Common Interest, as defined by Article 4 of Regulation (EC) No 347/2013.</p>	<p>investors, uncertainty about the collaborative outcome and network effects may prevent the development of a project or its effective design. At the same time, energy infrastructure may generate substantial positive externalities, whereby the costs and benefits of the infrastructure may occur asymmetrically among the different market participants and Member States. The Commission therefore considers that aid to energy infrastructure can be beneficial to the internal market by contributing to addressing these market failures. This is particularly true for infrastructure projects having a cross-border impact such as Projects of Common Interest, as defined by Article 4 of Regulation (EC) No 347/2013.</p> <p><i>Given the need for significant investment and upgrading of electricity infrastructure, it is expected that some DSO/TSO will have to make use of significant public funding, such as the Recovery and Resilience Facility, to avoid a socially unacceptable increase in the costs paid by users. However, since TSOs and DSOs are mainly remunerated based on the capital invested without receiving any remuneration for investments made with public funding, this may lead to an under-utilization of the available public funding and to a significant delay in the investment and upgrading of electricity infrastructure aiming at accelerating the electrification of society, which is one of the key factors of the energy transition and allowing the digitalization and the integration of renewable energy sources in the network</i></p> <p><i>In order to address this market failure, in some cases it could be necessary to adopt appropriate measures, including the grant of proportionate financial incentives, which will have to be assessed on a case-by-case basis in light of the specific circumstances and the incentive model used.</i></p>

Text proposal EU Commission	Eurelectric's amendment
<p>330. This Section applies to support for the construction or upgrade of energy infrastructure, as defined in Section 2.4, §18 (35). Unless the project is excluded from State aid control (see §331), the Commission will assess it as set out in this Section.</p>	<p>330. This Section applies to support for the construction or upgrade of energy infrastructure, as defined in Section 2.4, §18 (35). Unless the project is excluded from State aid control (see §331), the Commission will assess it as set out in this Section. <i>The compatibility of granting financial incentives to the DSO/TSO with a view of preventing the under-utilization of public funding (see paragraph above), if such financial incentives qualify as aid, will not be assessed under these guidelines. The Commission will review the compatibility of such financial incentive on a case by case basis.</i></p>

Paragraph 332: As a preliminary point, Eurelectric underlines that carbon-free electrification and energy efficiency will make the key contributions to the decarbonisation of transport, buildings and industry. To that end, the electricity industry is committed to deliver a carbon-neutral power supply for Europe well before 2050 and is transforming the energy system to make it more and more responsive, resilient, and efficient. By integrating different sectors, Europe will facilitate the use of clean and carbon-neutral power supply to decarbonise efficiently transport, industry and heating & cooling. Direct electrification solutions, complemented by indirect electrification ones, will link power and other economy sectors, and help to reduce final energy demand and GHG emission as it can deliver equivalent services with less energy input in most cases. Furthermore, the additional direct and indirect electricity demand from transport, heating and industry sectors could help to better match supply and demand when coupled with storage solutions, digitalisation, smart grids, and demand side response strategy.

Strong grids will be essential to support the integration of decarbonised and renewable energy carriers in all sectors of the economy, whether they are related to power, gas or heat. To do so, we call to identify best links between sectors through coordinated, cost-effective and future-proof infrastructure planning tools. In a more decarbonised, decentralised and digitalised energy system, closer cooperation is required among all stakeholders (especially TSOs and DSOs) to anticipate possible evolutions of the electricity, heat and gas networks, supply & demand.

Energy Sector Integration (ESI) directly refers to the substitutability of different energy carriers. Sectors are not anymore bound to specific energy carriers (e.g. there are now alternatives for fossil fuels in road transport, residential heating, etc.) and it is possible to convert one energy carrier into another (e.g. power-to-gas, gas-to-power). Infrastructures are also part of the ESI as they are also subject to substitutability even when arranged as traditional “natural monopolies” as in the case of electricity, gas or (potentially in the future) hydrogen. For instance, in order to integrate RES-E it would be possible to either invest in the electricity network or in the gas/hydrogen network together with power-to-gas. This substitutability is even clearer in the case of electricity vis-a-vis gas/hydrogen storage as they compete for the provision of the same

services in an integrated energy system (e.g. avoid RES-E curtailments). In addition, it would be possible to have a DSO/TSO operating the infrastructures corresponding to different energy carriers (e.g. gas and hydrogen). This would set a new context for cross-subsidization – i.e. not just between regulated and competitive activities (tackled through current unbundling rules), but also between different regulated activities (e.g. users of gas infrastructures subsidizing users of hydrogen infrastructures or vice versa). Therefore, the cumulative conditions to assess whether a natural monopoly excludes distortions on competition must include these ESI-related issues.

Text proposal EU Commission	Eurelectric’s amendment
<p>332. The Commission considers that a legal monopoly which excludes distortions of competition exists where the following cumulative conditions are met:</p> <ul style="list-style-type: none"> (a) the construction and operation of the infrastructure is subject to a legal monopoly established in compliance with Union law; this is the case where the TSO/DSO is legally the only entity entitled to make a certain type of investment and no other entity can operate an alternative network ¹¹⁴; (b) the legal monopoly not only excludes competition on the market, but also for the market, in that it excludes any possible competition to become the exclusive operator of the infrastructure in question; (c) the service is not in competition with other services₂ (d) if the operator of the energy infrastructure is active in another (geographical or product) market that is <u>open to competition</u>, cross-subsidisation is excluded; this requires that separate accounts are used, costs and revenues are allocated in an appropriate way and public funding provided for the service subject to the legal monopoly cannot benefit other activities. As regards electricity and gas infrastructure, as Articles 31 of respectively both Directive 2009/72/EC of the European Parliament and of the Council and 	<p>332. The Commission considers that a legal monopoly which excludes distortions of competition exists where the following cumulative conditions are met:</p> <ul style="list-style-type: none"> (a) the construction and operation of the infrastructure is subject to a legal monopoly established in compliance with Union law; this is the case where the TSO/DSO is legally the only entity entitled to make a certain type of investment and no other entity can operate an alternative network ¹¹⁴; (b) the legal monopoly not only excludes competition on the market, but also for the market, in that it excludes any possible competition to become the exclusive operator of the infrastructure in question; (c) the service is not in competition with other services, <i>especially considering the new context brought by the energy system integration and the new possibilities for substitutability</i>; (d) if the operator of the energy infrastructure is active in another (geographical or product) market that is <i>either regulated or open to competition</i>, cross-subsidisation is excluded; this requires that separate accounts are used, costs and revenues are allocated in an appropriate way and public funding provided for the service subject to the legal monopoly cannot benefit other activities. As regards electricity

Text proposal EU Commission	Eurelectric's amendment
<p>Directive 2009/73/EC of the European Parliament and of the Council require vertically integrated entities to keep separate accounts for each of their activities, this requirement will in all likelihood be satisfied.</p>	<p>and gas infrastructure, as Articles 31 of respectively both Directive 2009/72/EC of the European Parliament and of the Council and Directive 2009/73/EC of the European Parliament and of the Council require vertically integrated entities to keep separate accounts for each of their activities, this requirement will in all likelihood be satisfied for electricity and gas.</p>

Paragraph 339: We welcome that the draft CEEAG does not foresee staid aid support for infrastructures without safeguards to prevent the lock-in of fossil fuels.

In particular for natural gas infrastructure investments, we welcome that Member States would need to demonstrate (i) compatibility with the 2030 and 2050 decarbonisation targets is demonstrated (ii) that they are built to be hydrogen ready (iii) and that technological lock-in effects are avoided).

These issues should be highlighted:

- **First, infrastructures are at the heart of the ESI, which is key for achieving the EU's climate and environmental goals and in an efficient manner.** Substitutability between energy carriers also includes their infrastructures, even when arranged as traditional "natural monopolies" as in the case of electricity, gas or (potentially in the future) hydrogen (see comments to point 332).
- **Second, it is necessary to distinguish between aid for infrastructures for gas, for hydrogen and for blending of hydrogen into natural gas.** This is because this last option is clearly a transitory measure (see EC's Communication on a Hydrogen Strategy), that risks creating a carbon lock-in. Hence, a specific assessment should be required.
- **Third, Member States must demonstrate that the infrastructure will not have a negative impact on the EU's climate and environmental goals.** This depends basically on whether it will enable well-identified / realistic renewable and low carbon energy producers to operate.

Text proposal EU Commission	Eurelectric's amendment
<p>339. Section 3.2.2. is not applicable to energy infrastructure. In analyzing the impact of State aid to energy infrastructure on competition, the Commission's approach will be as follows: (a) In view of the existing requirements under the internal energy market legislation, which are aimed at</p>	<p>339. Section 3.2.2. is not applicable to energy infrastructure. In analyzing the impact of State aid to energy infrastructure on competition, the Commission's approach will be as follows: (a) In view of the existing requirements under the internal energy market legislation, the Commission will generally consider that aid for energy</p>

Text proposal EU Commission	Eurelectric's amendment
<p>strengthening competition, the Commission will generally consider that aid for energy infrastructure subject to full internal market regulation does not have undue distortive effects.</p> <p>(b) For infrastructure projects which are exempted, in whole or in part, from internal energy market legislation, the Commission will carry out a case-by-case assessment of the potential distortions of competition taking into account, in particular, the degree of third party access to the aided infrastructure, access to alternative infrastructure, crowding-out of private investment and the competitive position of the beneficiary or beneficiaries. For infrastructure exempted in whole from internal energy market legislation, the negative distortive effects on competition are considered particularly serious.</p> <p>(c) In addition to the approach above outlined, the Commission considers that for natural gas infrastructure investments, the positive effects on competition manifestly outweigh its negative effects on competition where the resulting infrastructure is fit for use for hydrogen and renewable gases or fuels of nonbiological origin.</p> <p>Where this is not the case, in order to off-set the negative effects on competition, the Member State concerned needs to demonstrate the following: (i) why it is not possible to design the project so that it is fit for use for hydrogen and renewable gases or fuel of non-biological origin; (ii) why the project does not create a lock-in</p>	<p>infrastructure subject to full internal market regulation does not have undue distortive effects, <i>unless that infrastructure has not been appropriately assessed under an energy system integration perspective.</i></p> <p>(b) For infrastructure projects which are exempted, in whole or in part, from internal energy market legislation, the Commission will carry out a case-by-case assessment of the potential distortions of competition taking into account, in particular, <i>the energy system integration</i>, the degree of third party access to the aided infrastructure, access to alternative infrastructure, crowding-out of private investment and the competitive position of the beneficiary or beneficiaries. For infrastructure exempted in whole from internal energy market legislation, the negative distortive effects on competition are considered particularly serious.</p> <p>(c) In addition to the approach above outlined, the Commission considers that for natural gas infrastructure investments, the positive effects on competition manifestly outweigh its negative effects on competition where the resulting infrastructure is fit for use for hydrogen or renewable gases or fuels of nonbiological origin. <i>Furthermore, Member States must demonstrate that such infrastructure is basically needed for enabling well-identified renewable and low carbon energy producers to operate.</i></p> <p>Where this is not the case, in order to off-set the negative effects on competition, the Member State concerned needs to demonstrate the</p>

Text proposal EU Commission	Eurelectric's amendment
<p>effect for the use of natural gas; and (iii) how the investment contributes to achieving the Union's 2030 climate target and 2050 climate neutrality target.</p>	<p>following: (i) why it is not possible to design the project so that it is fit for use for hydrogen or renewable gases or fuel of non-biological origin; (ii) why the project does not create a lock-in effect for the use of natural gas; and (iii) how the investment contributes to achieving the Union's 2030 climate target and 2050 climate neutrality target.</p> <p><i>(d) With regard to infrastructures fit for use of blending of gas and hydrogen, Member States must demonstrate (i) that such infrastructure is needed for enabling well-identified renewable and low carbon energy producers to operate; (ii) why the project does not create a lock-in effect for the use of natural gas; and (iii) how the investment contributes to achieving the Union's 2030 climate target and 2050 climate neutrality target.</i></p>

Section 4.10. Aid for district heating or cooling

General comments:

- [Eurelectric's response to the Renovation Wave](#) is calling for “an urgent transition away from inefficient fossil-based heating solutions towards full decarbonisation by 2050, at individual building or at district level - where district network exists.
- **Different starting points in terms of energy mix, economic situation and industrial activities and overall commercial availability of key transition technologies require different pathways and level of efforts across EU countries.** This should be duly taken into account by the European Commission.
- **While decarbonisation will not happen at the same speed in all EU Members States (MS), the end target should be to promote the connection to networks of high-efficient and decarbonized district heating and cooling,** coupled with the installation of the necessary devices for its use, such as heat pumps.
- Buildings both in urban and rural areas are a natural site for sectoral integration between heat and electricity, various combinations of which may fit different local needs and require the necessary grid planning, i.e. deploying big heat pumps in existing district heating systems, utilising waste heat coming from industry, sewage works and data centres, integrate heat coming from all carbon neutral sources.
- **Last but not least, investments in greening such systems should be promoted as well through state aid,** e.g. by replacing fossil fuel-based heat production through renewables-based heat production as part of a such a system. It is not clear how such cases are addressed in the draft guidelines (which aid category: 4.1 aid to GHG reduction or 4.10 aid for DHC? **If 4.10 is applicable, the greening of such networks does not seem to be addressed explicitly).**

Detailed comments:

Paragraph 341: The definition of an “energy efficient heating & cooling system” will be – according to proposal presented by the European Commission in July 2021¹⁵ – the subject of significant modification in framework of the revision of the EED, therefore the **proposed obligation creates uncertainty for the potential State-aid beneficiaries.** It is paramount that the definition of heating and cooling system are coherent across the legislative files, in particular between the CEEAGs and the “Fit for 55 package”.

Paragraph 343: **Current proposal concerning three years period is insufficient,** taking into consideration a proposal of revision of the definition of efficient district and cooling system that

¹⁵ See article 24 paragraph 1 the EED recast proposal COM(2021) 558 final.

was included in the EED recast proposal in July 2021. The **method for calculating the deadline for obtaining the status of an effective district heating system is unclear**. We propose to make it **more detailed so that there is no doubt when the investment activities should end**. In our opinion, due to proposed revision of the definition of energy efficient district heating and cooling systems as part of the EED recast, the works to reach standards of energy efficient system should start **within five years following the upgrade works**.

It is worth highlighting that the definition of an energy-efficient district heating system is directly related to the source (generation facilities) supplying district heating networks, while the identity of the grid owners and the generation source is not always the same. In this context, **it should be stressed that distribution network owners do not always have the ability to commit to starting the works on generation facilities**.

Paragraph 347: Eurelectric strongly supports an urgent transition away from inefficient fossil-based heating solutions towards full decarbonisation by 2050 where district network exists. In some regions, where electrification is currently not cost-efficient the construction and modernisation of the district heating networks currently running on fossil fuels in combination with a binding commitment to decarbonise these networks in line with the accelerated Energy transition, is one of the main elements of the strategy to combat so-called low emissions¹⁶ in urban areas. In some regions, it could indeed bring measurable ecological effects, as it allows to move away from inefficient coal furnaces¹⁷ and therefore contributing to tackling the issue of air pollution in urban areas¹⁸. Connecting an increasing number of consumers to district heating systems is one of the basic types of projects in the field of reducing greenhouse gas emissions related to the heating of residential or industrial facilities.

In those cases, we would therefore like to highlight that paragraph 347 significantly reduces the possibility of building and expanding district heating networks based on fossil sources where such a binding commitment exists.

¹⁶ Low emissions means emission of combustion products of solid, liquid and gaseous fuels to the atmosphere from emission sources (emitters) located at a height of not more than 40 m. It does not mean low level of emissions

¹⁷ For example, in Poland, the project entitled "Elimination of low emissions in selected cities of the Silesian agglomeration", which is co-financed by the Cohesion Fund in framework of the Operational Programme Infrastructure and Environment (2014-2020) can bring after completion the following (estimated) environmental effects:

- reduction of final energy consumption: 102 398.38 GJ / year,
- reduction of primary energy consumption: 177 194.14 GJ / year,
- annual decrease in greenhouse gas emissions: 7129.20 tons of CO2 equivalent / year,
- decrease in dust (particulate matter) emissions: 38.81 Mg / year.

¹⁸ 36 of the 50 most polluted cities in the European Union are in Poland. Among all 46 zones in the country, according to the latest air quality assessment for 2019, the permissible level of PM10 was exceeded in 22 zones, the permissible level of PM2.5 was exceeded in 9 zones, the permissible level of Benzopyrene target level was exceeded in 36 zones. As noted in the European Funds for Climate, Energy and Environment Programme, "due to legal restrictions on granting public aid for the expansion or modernization of the heating networks, difficulties arise in the implementation of the air quality improvement policy, one of the main elements of which is the development of district heating, in order to eliminate local heat sources characterized by high emissions, including mainly suspended dust PM10 and PM2.5, B (a) P responsible for the formation of the so-called low emissions and carbon dioxide emissions into the air".

Allowing state aid funds under certain conditions for these cases would allow a fuel change in parallel to the network investment enabling the development of the network for future uses with zero and low-emission sources.

Paragraph 348: Regarding support to district heating generation projects which involve gas, Member States must provide explanations for how they will ensure that the investment is consistent with the overall strategy to achieve the Union’s 2050 climate neutrality target. Eurelectric fully supports the guiding principles for the assessment of investment in fossil fuels or natural gas projects. The Power Sector is committed to delivering a carbon-neutral electricity supply well before 2050.

The irreversible decline of fossil fuels such as natural gas in the EU energy mix¹⁹, needed to reach the European climate objectives, requires further direct electrification based on renewable and carbon neutral sources. Where this is neither feasible nor efficient, other energy carriers can be used, including renewable and low-carbon gases (biomethane, green hydrogen, etc...).

Gas-fired capacity (readily equipped to be able to run on renewable/low-carbon gases in the long-term) could be instrumental and play a transition role in the short/medium term in securing electricity supply at the right level, to cope with more penetration of intermittent RES generation, and in the long term to complement RES generation in times of high demand. This is even more important if the level of electrification is higher than today. The assessment of investment in gas projects should take the context of energy system integration into account and the contribution to security of supply of renewables and low-carbon gases in the energy transition of some EU regions, especially those ones that don’t have access to hydro or nuclear, depending on national specificities and the changes in their generation mix. The balancing test between positive and negative effects needs to take into account the need to cope with the three different objectives of EU energy policy – cost-effective decarbonization, security of supply and cost for consumers. It should be clarified, how the “binding commitments” to substitute natural gas by renewable gas for beneficiaries of aid (operators) are to be implemented, considering that it is not yet foreseeable when exactly sufficient amounts of renewable gases will be available at a competitive price to be used for electricity/ heat generation. Rather than imposing binding commitments, Eurelectric therefore considers hydrogen-readiness (or more general renewable gases readiness) to be an appropriate criterion to avoid lock-in effects into natural gas.

¹⁹ Our [Decarbonisation Pathway Study](#) foresees that the fossil energy supply will be gradually phased out and represent only ~5% of total energy supply by 2045. Moreover, gas will still account up to ~15% of total installed electricity generation capacity in order to secure system reliability, especially in regions that don’t have access to hydro or nuclear, depending on national specificities and the changes in their generation mix.

Section 4.11. Aid in the form of reductions from electricity levies for energy-intensive users

Paragraph 357:

- **In line with the EU decarbonisation objectives, EIUs should be encouraged through State aid to invest in energy efficiency and the decarbonisation of production processes, for example via renewable or low-carbon electrification.**
- **The current provision might not provide sufficient incentive for industry to decarbonize through electrification.**
- **We therefore suggest that that the allocation of aid to EIUs also take into account the concrete investment plans for decarbonization through electrification.** This should be assessed based on concrete criteria (see our proposal for new paragraph 357 a)).

Text proposal EU Commission	Eurelectric's amendment
<p>356. The Commission considers that Member States may grant reductions to levies under this Section only where the overall cumulative level of these levies (before any reductions) is at least [...] EUR/MWh.</p> <p>357: The aid under this Section should be limited to sectors that are at a significant competitive disadvantage and risk of relocation outside the Union because of the eligible levies. The risk of relocation depends on the electro-intensity of the sector in question and its exposure to international trade. Accordingly, aid can only be granted if the undertaking belongs to a sector facing a trade intensity of at least 20 % at Union level and an electro-intensity of at least 10 % at Union level. In addition, the Commission considers that a similar risk exists in sectors that face an electro-intensity of at least 7% and face a trade intensity of at least 80%. The sectors meeting these eligibility criteria are listed in Annex I.</p>	<p>356. The Commission considers that Member States may grant reductions to levies under this Section only where the overall cumulative level of these levies (before any reductions) is at least [...] EUR/MWh. <i>In case an EIU qualifies both through trade exposure and electro intensity (ie its listed in Annex 1 industries) as well as through ambitions to decarbonize, the overall cumulative level of these levies (before any reductions) can be at least [...] EUR/MWh.</i></p> <p>357: The aid under this Section should be limited to sectors that are at a significant competitive disadvantage and risk of relocation outside the Union because of the eligible levies. The risk of relocation depends on the electro-intensity of the sector in question and its exposure to international trade. Accordingly, aid can only be granted if the undertaking belongs to a sector facing a trade intensity of at least 20 % at Union level and an electro-intensity of at least 10 % at Union level. In addition, the Commission considers that a similar risk exists in sectors that face an electro-intensity of at least 7% and face a trade intensity of at least 80%. The sectors meeting these eligibility criteria are listed in Annex I. <i>EIUs that are both deemed eligible and clearly demonstrate ambitions to decarbonize, for example through electrification through concrete investment plans, might receive additional levy exemptions. –</i></p> <p><i>357a (new) The concrete investment plans for decarbonization through electrification occurs if</i></p>

Text proposal EU Commission	Eurelectric's amendment
	<p><i>an EIU's investment is higher than a certain percentage of gross value added in the last X years. In addition to concrete investment plans, the maturity of technology should be considered. Therefore, the percentage attained by an EIU's investment is as follows:</i></p> <ul style="list-style-type: none"> <i>i) xx% for electrification of low temperature process heat</i> <i>ii) xx% for electrification of high temperature process heat</i> <i>iii) xx% for on-site (private wire) electrolysis with renewables</i> <i>iv) xx% for off-site (PPA-based) electrolysis with renewables</i> <i>v) xx% for other forms of electrification</i>
<p>The aid under this Section should be limited to sectors that are at a significant competitive disadvantage and risk of relocation outside the Union because of the eligible levies. The risk of relocation depends on the electro-intensity of the sector in question and its exposure to international trade." These rules might not provide sufficient incentive for industry to decarbonize through electrification? For example, a chemical company that is considering using heat pumps for low-temperature industrial processes might need reductions from electricity levies to make the business case work.</p>	

Section 4.12: Aid for coal, peat and oil shale closure

Paragraph 371: While well intended and highly welcome, attention should be paid to the assessment of the “profitability criterion”. Indeed, if we want this measure to actively incentivise the closure of coal, peat and oil shale plants, the profitability criterion can be an important barrier. The fulfillment of this criterion depends on the current market conditions, including in particular fuel prices and quotations of CO2 emission allowances, and as a result may change during the notification process of the aid measure. There are also significant differences in the operating costs of individual power plants, depending on the technology used and the age of the installation. At a time when some plants are on the verge of profitability, others may still generate income from electricity generation. These differences should be considered in the guidelines, so as to leave eligible assets the opportunity to benefit from the aid.

Paragraph 372: The EC could use stronger language to encourage reinvestment in the energy sector. We thus propose the following amendment.

Text proposal EU Commission	Eurelectric’s amendment
<p>372. Measures covered by this Section can facilitate the development of certain economic activities or areas. For instance, such measures can create space for the development of other, likely environmentally friendly, activities in order to offset the reduction in the power generation capacity caused by the early closure. In the absence of the measure, this development may not take place to the same extent. In addition, the predictability and legal certainty introduced by such measures can help to facilitate the ordered closure of coal, peat and oil shale activities.</p>	<p>372. Measures covered by this Section can facilitate the development of certain economic activities or areas. For instance, such measures can create space for the development of other, likely environmentally friendly, activities in order to offset the reduction in the power generation capacity caused by the early closure. In the absence of the measure, this development may not take place to the same extent. In addition, the predictability and legal certainty introduced by such measures can help to facilitate the ordered closure of coal, peat and oil shale activities. <i>For instance, such measures can create space for the development of other activities in order to offset the reduction in the power generation capacity caused by the early closure. Member States are encouraged to facilitate carrying out investments supported under the guidelines</i></p>

Paragraph 373: Mine and coal power plant closure processes are complex, and it takes years for all the measures and closure works to be implemented. Therefore, we believe that the proposed 1-year timeline for closure of the plant after receiving a compensation is unrealistic.

- **The timeline should be significantly extended/revised** so as to take into account the necessary timeframe to negotiate, develop and implement the proper closure

programmes and new activities that will foster a just transition and gradual transition away from coal.

- **The Commission should also take into consideration that the Member States are in the process of adopting Territorial Just Transition Plans**, which will include just transition activities and programmes to offset socio-economic challenges deriving from the transition process. Such plans will extend well beyond one year.
- When Member States decide to close a coal mine or coal powerplant **the CEEAG should allow them to determine the financial burden for the companies and regions and compensate them accordingly, during the appropriately long and on case-by-case determined timeframe**. We would welcome clarification on the timeframes envisaged for the compensation payment. The Commission should also have in mind different national specific situations when it comes to just transition processes, including different timelines of the closing and restructuring process. Security of supply element must be considered as well, especially for countries with a high share of coal in their energy mix. Resource adequacy assessment conducted at European and National level should be considered. We believe all relevant legislation and strategies that affect the just transition processes at the EU and national level must be coherent, including state aid guidelines, which represent an important basis for investments related to the coal phase-out.
- The requirement for closure within one year is clearly not realistic for such a closure process: the timeline should be significantly revised. For instance, the actual awards of closure aid could be split and associated to the completion of milestones.

In any case, and in order to ensure proportionality by considering the more recent information and avoiding information asymmetries, (a) if the compensation is determined through a competitive process, such process should take place not earlier than 12 months before the decommissioning date established, or (b) if the compensation is determined by estimating the funding gap, then it should be calculated no earlier than 12 months before the decommissioning date established. In addition, claw-back mechanisms in the sense of point 53 should be implemented in order to take account of estimation errors related to costs and revenues in the factual and counterfactual scenarios, thus avoiding excessive compensation.

Paragraph 378 & 379: To ensure that the most effective projects will be implemented, quantification of environmental benefit above Union standards will be also necessary (where possible in terms of subsidy per tonne of CO₂ equivalent emissions avoided). It is important to ensure that the measure is structured in a way that limits to the minimum any distortion of competition in the market.

It is important to highlight that the plant decommissioning and the resulted voluntary cancellation of allowances could result in a disproportionate reduction of allowances for the remaining installations on the market and therefore in a redistribution issue between Member States that need to be addressed at political level.

Indeed, the low-income countries may not have sufficient revenues in their national budgets to finance the energy sector and industry transition, as they cannot simply transfer those costs on end-users. This is why, along with the new 55% emissions reduction target, the European Council identified the problem of imbalances in some Member States not receiving revenues that are equivalent to the costs paid by the ETS installations. The Council calls for having this issue

addressed as part of the upcoming legislation together with the possible ETS extension or creation of a separate ETS for the current non-ETS sectors.

Section 7. Applicability

Paragraph 414 (a): The obligation for Member States to amend their existing aid schemes (which have been approved by the European Commission under the previous State Aid Guidelines) to comply with the new Guidelines infringes the principles of non-retroactivity of the law, legal certainty and legitimate expectations. Indeed, aid schemes are scrutinized in the light of the applicable guidelines when aids are notified, authorized and implemented. An *a posteriori* re-examination of the aid schemes and an application of new requirements laid down in the new guidelines would create real uncertainty for Member States, beneficiaries or investors and may prevent some environmental protection projects. In other words, this would lead to planning insecurities for investors that have been planning their business models in the knowledge of long-term aid schemes.

Eurelectric also calls on the Commission to maintain the existing exemption for already notified renewable support schemes, in accordance with paragraph (250) of the 2014-2020 EEAG.

Eurelectric pursues in all its activities the application of the following sustainable development values:

Economic Development

- Growth, added-value, efficiency

Environmental Leadership

- Commitment, innovation, pro-activeness

Social Responsibility

- Transparency, ethics, accountability



Union of the Electricity Industry - Eurelectric aisbl
Boulevard de l'Impératrice, 66 – bte 2 - 1000 Brussels, Belgium
Tel: + 32 2 515 10 00 - VAT: BE 0462 679 112 • www.eurelectric.org
EU Transparency Register number: [4271427696-87](https://ec.europa.eu/transparency/regexp1/?table=INITIATIVES&id=4271427696-87)