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CEE Bankwatch Network additional input for the EEAG public consultation

Bankwatch welcomes the EEAG review and hopes that the opportunity is well used to prevent environmentally harmful subsidies.

In our opinion the fitness check did not fully capture all the issues at stake, particularly with regard to ensuring that the provisions on compliance with EU environmental legislation are fulfilled. Nor does the questionnaire adequately capture what we would like to convey regarding the revision. Some topics are not covered at all, such as capacity mechanisms and renewable energy cooperatives, while other questions are formulated in a way that does not allow us to answer in the way we would like, eg. by including low-carbon and renewable hydrogen under the same question, or by including too narrow options for multiple choice questions. Some questions are also too broad to generate meaningful answers, eg. on whether competitive bidding should be the general rule for granting aid.

We have therefore prepared this annex to summarise the improvements that are needed in the EEAG based on our experience.

Overall, more emphasis needs to be put on ensuring that state aid does not support any activities which are not in line with the EU's decarbonisation goals and the Green Deal and does not support any environmentally harmful activities.

Much more care needs to be taken in assessing these aspects than has been the case so far - the likely environmental impact of the aid needs to be assessed as part of the EC's decision-making. Too often the EC has accepted planned measures on the basis that they are less damaging than another given option, without checking whether there could be other alternatives (including energy efficiency measures) that would truly represent the best use of public money.

This could be greatly aided by the proposal to initiate public consultations on proposed aid schemes, which we warmly welcome as a step forward to increase aid transparency and effectiveness.

Our more specific proposals are:

- 1) **Coherence with EU environmental and procurement legislation:** Paragraphs (7) and (117) of the EEAG require compliance with EU environmental legislation:
“(7) To avoid that State aid measures lead to environmental harm, in particular Member States must also ensure compliance with Union environmental legislation and carry out an environmental impact assessment when it is required by Union law and ensure all relevant permits.”

“(117) With regard to aid for the production of hydropower, its impact can be twofold: on the one hand, such aid has a positive impact in terms of low GHG emissions, on the other hand, it might also have a negative impact on water systems and biodiversity. Therefore, when granting aid for the production of hydropower, Member States must respect Directive 2000/60/EC (61) and in particular Article 4(7) thereof, which lays down criteria in relation to allowing new modifications of bodies of water.”

However the implementation of these provisions is not adequate in reality. While the EU’s environmental acquis is in any case binding for energy projects, support schemes still award support for projects which contravene the acquis. This particularly applies to hydropower. For example, the [EC in 2015 opened a case against Romania for failure to apply the environmental acquis to small hydropower plants](#), but there is no mechanism in place to ensure that the affected plants no longer receive incentives. The recent [EC letter of formal notice to Croatia on inadequate application of the Habitats Directive in the case of wind farms](#) and the [experience with the Kaliakra wind farm in Bulgaria](#) shows that this also applies to other renewables. **There is no clear provision by which State aid for illegally permitted projects is systematically halted or prevented, and this needs to be changed in the new EEAG.**

In reality, the exemptions in Art. 4 of the Water Framework Directive (WFD) are over-applied and endanger the achievement of the Directive’s goals. As the EC’s 5th WFD implementation report put it in February 2019:

“The exemptions foreseen in Article 4 of the WFD currently cover around half of Europe’s water bodies. This mainly concerns natural water bodies, but increasingly also heavily modified and artificial water bodies, next to new physical modifications. Whilst the justifications for such exemptions have overall improved, their persistent wide use is an indicator of the significant efforts still needed to achieve good status or potential by 2027.”

DG COMP’s State aid decisions for incentive schemes do not demonstrate deep analysis of whether countries properly apply eg. Article 4(7). It appears to mainly rely on pledges from the countries themselves. While incentives for hydropower have declined in many EU Member States, they are still encouraging overdevelopment of small hydropower plants in some countries, particularly Italy, and also in the EU accession countries. This issue is seriously affecting public acceptance of renewable energy per se and is leading to degradation of riparian habitats and species in hundreds of kilometers of river stretches.

Just as Art. 3 of the RED rightly states that *“Member States shall grant no support for renewable energy produced from the incineration of waste if the separate collection obligations laid down in that Directive have not been complied with”*, the EEAG also needs to clearly stipulate, that no incentives for hydropower may be provided in countries which have not achieved the goals of the WFD, even for very small plants.

Likewise, in order to ensure joined-up legislation, and to make sure that renewable energy projects developed in breach of the EIA, Birds or Habitats Directives, do not receive

incentives, **the EEAG needs to clearly state that any energy/environment projects or sectors subject to EC infringement procedures, ongoing investigations that may lead to infringement procedures, or national level court cases related to the above Directives may not receive incentive payments until the issue is resolved.**

As well as environmental acquis, it is important for State aid to be granted only to projects complying also with other EU rules, such as on procurement. [In 2019 the European Commission called on eight Member States to comply with EU concessions law regarding hydropower.](#) Given the potential for lack of transparency in the award of concessions to lead to nepotism or corruption, projects whose concessions were awarded through non-compliant processes should not be allowed to be granted State aid.

- 2) **Capacity mechanisms:** Despite EEAG Paragraph (220)'s emphasis on ensuring the examination of environmentally or economically harmful subsidies, capacity mechanisms have in reality still been allowed to support coal and gas generation. **Therefore additional provisions are needed - in line with Chapter IV of the EU Electricity Market Regulation - to verify whether Member States have alternative options than applying capacity mechanisms,** and if not, whether the proposed scheme has really been designed to limit environmentally harmful subsidies. **Assessments need to put the energy efficiency first principle into action at all times.**
- 3) **Energy infrastructure:** The TEN-E Regulation is currently under revision and the EEAG will clearly need revising in line with the amended Regulation. Among others, we expect that this will lead to more consistent EU policy with regard to decarbonisation and an end to its support for new gas infrastructure, either directly or indirectly (eg. via hydrogen). **Therefore paragraph (208) of the EEAG needs to be amended to read: "For oil and gas infrastructure projects, the Commission presumes that there is no need for State aid."**

Speculation about the potential use of such infrastructure for so-called "green gas" in the future cannot be an excuse to continue the lock-in to gas infrastructure, as it is highly unlikely that so much green gas will be available or economically viable. State aid decisions must be taken based on the current state of knowledge without overoptimistic speculation about potential future development, and must clearly exclude all fossil fuels.

- 4) **Highly-efficient cogeneration:** Paragraph (151) allows operating aid for high energy efficient cogeneration plants as defined in Annex II of the Energy Efficiency Directive on the basis of the conditions applying to operating aid for electricity from renewable energy sources under certain circumstances. However this has proven in practice to be a loophole allowing State aid for fossil fuels as well as incineration of waste that is not biodegradable and would therefore not qualify for renewable energy State aid (eg. [Sofia incinerator](#)). Some studies also demonstrate that high efficiency CHP are not actually as efficient as assumed. CHP plants in Germany are only around 12% more efficient than plants with separate energy

generation, without even considering grid losses which amount to around 10%,¹ hardly enough to justify such special treatment.

It is no longer acceptable to provide State aid for fossil fuels in any form, efficient or not, nor for other unsustainable energy forms such as waste incineration. The Commission needs to review the definition of CHP which can receive aid under the EEAG and stop linking it to the current definition from the Energy Efficiency Directive.

- 5) **Aid to waste management: Section 3.5.2. of the EEAG needs to be brought into line with Art.3 of the 2018 Renewable Energy Directive**, which states that Member States shall grant *no support for renewable energy produced from the incineration of waste if the separate collection obligations laid down in the Waste Framework Directive have not been complied with.*

This has to apply to all energy generated from waste, even if being assessed as cogeneration rather than renewable energy, in order to avoid circumventing the waste hierarchy. For example [in the Sofia incinerator case](#) the EC in 2019 decided not to raise objections. The Decision included a section in which Bulgaria had assured the EC that *“Bulgaria confirmed that the project complies with the Directive 2008/98/EC on waste (“Waste Directive”) and in particular with the waste hierarchy set out therein. As stated by Bulgaria, the waste that will be subject to energy recovery in the CHP installation has been subject to preliminary treatment in the MBT facility in order to extract recyclable materials and cannot be further subject to recycling. If the RDF is not subject to energy recovery, it would be landfilled and this would be contrary to the waste hierarchy, which favours waste recovery over disposal. Finally, Bulgaria confirmed having introduced separate collection in line with the obligations applicable in accordance with the Waste Directive, and stated that the project will not prevent it from meeting the 2025, 2030 and 2035 targets for the recycling of municipal waste set out in the Waste Directive.”*

This explanation did not address the question of whether any separate collection had been applied to the waste before MBT treatment, which would have yielded more and better quality recyclables. Nor did it address the fact that Bulgaria was one of the countries that in 2018 received an [early warning from the EC](#) about missing its 2020 recycling target, as it had a municipal waste recycling rate of only 32 % in 2016 - far from the required 50% by 2020.

While it is technically true that the Sofia incinerator alone will not singlehandedly prevent the country from meeting its targets, directing limited resources towards incineration instead of prevention and recycling increases the likelihood of failure to achieve them. By 2023, Bulgaria must separately collect biowaste, under the 2018 Waste Framework Directive, and no analysis was given of how this would affect the amount of RDF available. In fact, in our understanding of Article 3 of the RED, the State aid will actually have to be stopped in 2023 if Bulgaria does not fulfil its separate collection obligations.

¹ [Evaluierung der Kraft-wärme-Kopplung. Analysen zur Entwicklung der Kraft-Wärme Kopplung in einem Energiesystem mit hohem Anteil erneuerbarer Energien](#), Prognos AG, Fraunhofer IFAM, Öko-Institut e.V, BHKW-Consult, 25 April 2019.

The EEAG at the very least therefore needs to stipulate how exactly to assess compliance with separate collection and recycling obligations - some of which may still be in the future at the time the aid is approved - and what should be done in the case of countries not complying with them.

However, it should also be taken into account that the Commission's [Communication on the role of waste-to energy in the circular economy](#) of 26 January 2017 states that: *"Public funding should also avoid creating overcapacity for non-recyclable waste treatment such as incinerators. In this respect it should be borne in mind that mixed waste as a feedstock for waste-to-energy processes is expected to fall as a result of separate collection obligations and more ambitious EU recycling targets. For these reasons, Member States are advised to gradually phase-out public support for the recovery of energy from mixed waste."*

It would therefore be much simpler and more in line with the precautionary principle to prohibit the granting of new aid for waste incineration in the new EEAG.

- 6) **Biomass:** Under the current EEAG, biomass can benefit from the same aid as any other renewable energy, but in addition, Member States can also provide operating aid for existing biomass plants after their depreciation. However there is increasing evidence that biomass is receiving overly favourable treatment considering its environmental impact, which includes air pollution, deforestation, degradation of forest habitats and greenhouse gas emissions.

Bankwatch's [2019 analysis of draft NECPs](#) shows that Central and Eastern European (CEE) countries overall plan logging and the use of biomass above sustainable levels. Estonia cuts down 30% more forests than grow back for biomass use, while in Bulgaria 40% of households are inefficiently using wood for heating. In Czechia and Poland, projected increase of biomass use will lead to imports of wood, and in Slovakia logging grew by at least 75 per cent from 1990 to 2015 (6% loss of forest cover). This means both an increase in CO₂ emissions from biomass, and a decline in CO₂ storage by forests.

Moreover, even in cases where forest is regenerated, there are significant uncertainties about greenhouse gas emissions from biomass combustion and the long period between cutting and regeneration. **We are aware that the Commission is currently examining this issue as part of the RED II revision. The EEAG must be adjusted accordingly.**

- 7) **Hydrogen:** Hydrogen is currently receiving a large amount of attention, among others in the EU Hydrogen Strategy released in July 2020. Renewable hydrogen may play a role in sectors which are difficult to decarbonise, but caution is needed. Hydrogen needs large amounts of energy to produce, and even if generated by renewable energy, can put pressure on ecosystems.

Moreover, there is a serious danger of boosting fossil gas hydrogen by overestimating the future availability of renewable hydrogen. Shaping policies and infrastructure around renewable hydrogen that may or may not materialise is likely to result in extending and expanding the use of fossil hydrogen instead. Currently, [less than 0.1 percent of hydrogen](#)

[capacity is for “green hydrogen”](#), and the availability of renewable hydrogen in the future has yet to be proven.

Therefore, direct or indirect support for hydrogen must be limited to strictly renewable hydrogen, to be used only for hard-to-decarbonise sectors, and must exclude any support that relies on fossil fuels and unproven technologies such as CCS.

- 8) Thresholds for renewable energy auctions and feed-in tariffs:** The current exceptions to the requirements to carry out auctions for renewable energy operating aid are not sufficient to allow the development of energy communities. Although the Clean Energy for all Europeans Package recognizes the environmental, economic and social benefits of energy communities, the current State aid rules limit their access to support schemes, as some of these projects are larger than the 500 kW general threshold.

Auctions are difficult for energy communities to participate effectively in, because the auction criteria are often based on cost, which is not something energy communities can usually compete on. The costs, administration, and timelines for decision-making may also prevent energy communities from participation. **The EEAG therefore needs to consider whether to raise the threshold for exempting energy communities from auctions, or to stipulate a specific regime** for renewable energy communities such as reserving specific capacity available in auctions for them.

On the other hand, the 500 kW threshold may be too high for hydropower plants, as it has proven in practice that providing feed-in tariffs incentivises overdevelopment of small plants, with high cumulative impacts, a low contribution to electricity generation, and without the adequate application of the environmental acquis. An example of a very small plant causing damage in a Natura 2000 area is the [Dabrova Dolina hydropower plant](#) in Croatia, with an installed capacity of only 250 kW. **Therefore there should be no threshold for hydropower plants to be allowed feed-in tariffs.** An alternative could be a very low threshold such as 50 or 100 kW, but we see little benefit from this due to the low potential for significant contribution to electricity generation by micro or pico-hydropower.

In addition, we welcome the Commission’s concerns over abuses of the status of small projects, notably when integrated projects are sliced into several small ones to benefit from the thresholds. Although such abuses shall be primarily addressed by national authorities, the Commission needs to ensure that feed-in tariffs are granted only to genuinely small projects.