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Position Paper

on

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

Frankfurt am Main, 22.07.2021

AGFW is the German energy efficiency association for heating, cooling and cogeneration. We represent more than 550 utility companies (national and regional), energy service providers as well as industrial companies of the sector across Germany and Europe. As rule-setting body we represent over 95 % of Germany´s DHC market.

General appreciation

AGFW welcomes the Commission´s new draft Guidelines on State aid for climate, environmental protection and energy (CEEAG) as an important step towards aligning European State aid control with our common climate objectives. The draft CEEAG´s general ambition to focus on a simplification, modernization and flexibilisation of the existing guidelines in conjunction with an ambitious expansion of GBER is the right approach in order to make the framework for European aid control fit for purpose

Following this underlining objective, AGFW wishes to highlight a couple of aspects, where we think adjustments to the current draft would unlock further regulatory potential.

A full appreciation of “single market-safe”-district heating and cooling

AGFW supports the Commissions appreciation of public investments into district heating and cooling (DHC) as a contributor to addressing market failures as the leading rationale of section **4.10**. This notion of a “single market-safe”- DHC should be consistently applied throughout the revised CEEAG framework by establishing a clearly streamlined assessment formula for analyzing the effects on single market competition and trade.

Given the acknowledged positive effects of DHC expansion on single market coherence and fair competition, the respective CEEAG assessment should not be conducted as a case - by – case analysis, but define clear benchmarks for an efficient and predictable review process. AGFW therefore suggests to align the review scopes of **chapter 3.3** and **section 4.10.5** by reserving any case-by-case assessment - as foreseen in **349.** - for State aid projects which do not meet the conditions of **347 or 348.**

The concept of “single market-safe”- DHC in CEEAG should furthermore coincide with a renewed approach on DHC under GBER, containing significantly elevated notification thresholds and a likewise simplified and streamlined assessment framework. Such an approach would have the benefit of speeding up approval processes - and would remain in line with the general positive approach on aid for DHC throughout the draft - while ensuring full coherence with EU and national objectives. Ambitious national aid programs focusing on DHC network decarbonsiation and expansion- such as the German ***Federal Program For Efficient Heating Networks (BEW)*** – should thus in the future be *GBER*-compatible to safeguard their swift implementation in view of 2030.

A clear role for heat and power cogeneration (CHP)

Given the pivotal role of heat and power cogeneration (CHP) the present EEAG have provided an extensive framework to promote the development of CHP as a means for efficient carbon

reduction. The future CEEAG should similarly formulate a clear and consistent appreciation of CHP as an indispensable pillar of the energy transition. Most importantly, cogeneration should be subject to a clear assessment framework with an unequivocal distinction between the scopes of **chapter 4.1 and 4.10**.

Moreover, the CEEAG appraisal should lay a stronger focus on the comparative ecological performance of CHP with alternative generation technologies deployed as part of specific national energy policy considerations such as security of supply and residual load capacity within **83**. CEEAG should also develop a holistic approach to investment and operational aid for CHP plants, in particular as part of the scope of DHC investments in chapter **4.10**. where the inclusion of operational aid should be considered. Furthermore, CEEAG´s acknowledgement of the direct carbon reduction potential of cogeneration over single generation should be applied more consistently to encourage the respective shift of investments. Hence, sections addressing the necessary fuel switch such as - **92, 110, 348** - in energy and heat generation should be complemented through a caveat dedicated to high efficiency CHP. Lastly, the proposed limitation of aid to the additional costs associated with the cogeneration process in comparison to conventional generation constitutes an unfeasible criterion as a general rule in particular since the applicable benchmark is not sufficiently defined.

A better consideration of the decarbonisation path for heating and cooling networks

As DHC networks are an essential component of the future technology mix in heating and cooling, their expansion constitutes a crucial task in view of our 2030 ambitions. The future CEEAG should support this transition by providing a framework that is fit for purpose. Given the shortening time frame towards 2030, fuel switch and network expansion must happen simultaneously. AGFW therefore argues that the CEEAG should enable Member States to pursue both objectives in a complementary fashion. In this context, AGFW has provided clarifications on the scope of **347.** to avoid potential barriers for an ambitious expansion of district heating networks.

Greater administrative flexibility for Member States in their State aid design

AGFW is supportive of the Commission´s overarching ambition to develop a modernized and simplified framework that enables public investments into the energy and climate transition while minimizing distortions of trade and competition. Following this rationale, Member States which direct aid towards sectors which are not liable to cause such distortions –such as district heating systems - should enjoy greater flexibility in terms of aid scheme design in order to

incentivize investments and facilitate aid rollout. This flexibility should for example include a national discretion on carrying out public consultations (**85.**), as Member States are better positioned to assess the appropriate scale of stakeholder involvement. Greater flexibility should also be allowed regarding public tendering (**92.**), as national markets especially in terms of scale and competitive structure vastly differ. Moreover, with regards to DHC related investments Member States should be able to reside to using fixed aid intensities over the funding gap method as a well-established approach if deemed desirable.

Proposed Amendments:

Proposal:

2.4 Definitions

18.

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

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

(35) (e). ~~***infrastructure used for transmission or distribution of heat/steam/cooling from multiple producers/users, based on use of zero/low carbon heat/steam or waste heat from industrial applications;***~~

After (62) new 'waste heat and cold' means waste heat and cold as defined in article 2 (9) of Directive 2018/2001;

Justification:

The future CEEAG should draw a clear distinction between DHC and energy infrastructure as they are subject to entirely differing regulatory frameworks. The current ***(35) (e)*** *should therefore be reconsidered to sharpen the existing definition on energy infrastructure and secure the coherence between present European energy regulation and European State aid control.*

Furthermore the CEEAG should list a clarifying definition of waste heat as set out in article 2 (9) of Directive 2018/2001.

Proposal:

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 no 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 inefficiencies including in particular those externalities that may hinder the achievement of climate objectives set under EU law.***~~

Justification:

*While AGFW generally supports the introduction of a sustainable finance framework to benchmark private investment decisions, the Taxonomy-Regulation and the adjunct "do no significant harm"-principle to not constitute a feasible assessment criterion for State aid control. This is primarily owned to the fact that they have not been designed to perform a balancing of public interest – the core element of State aid control – but as a steering tool for exclusively private investment. Moreover, as the Taxonomy-Regulation still awaits the publication of further delegated acts it is currently unfit for purpose to serve as a reliable framework for State aid assessments. Lastly, the Taxonomy-Regulation is subject to review clauses and mechanisms that are not harmonized with present or future State aid regulations, which would hence be incompatible with the structural coherence of CEEAG and significantly decrease the predictability of aid assessments. AGFW therefore suggests to merge **69.** and **68.** into a single comprehensive assessment criterion in particular taking into account national strategies for heating and cooling, security of supply issues and other relevant aspects.*

Proposal:

71. Measures that directly ~~***or indirectly involve***~~ support ***the increased use of*** ~~***to***~~ fossil fuels, in particular the most polluting fossil fuels, ***over climate neutral energy sources*** are unlikely to create positive environmental effects and often have important negative effects because they can increase the negative environmental externalities in the market. The same applies for measures involving new investments in natural gas, unless it is demonstrated that there is no lock-in effect. This will in principle render a positive balancing for such measures unlikely, as further explained in Chapter 4.

Justification:

While transitory investments into fossil fueled energy infrastructures will still be necessary in the immediate future, it will be crucially important to ensure that these investments support the subsequent expansion of renewables and utilization of climate neutral energy sources such as through carbon-neutral-fuel-ready CHP plants. The future CEEAG should therefore always scrutinize public investments connected to fossil fuels in the context of their role within the energy transition and thus set a clear focus on preventing direct preferential treatment of fossil investments to the detriment of climate neutral energy sources within national aid policies.

Proposal:

80. Member States should ensure that aid remains necessary for the duration of schemes that run for more than ~~***one year***~~ ***two years*** by updating their analysis of relevant costs and revenues ~~***annually every or, for schemes involving less frequent granting, before aid is granted***~~ ***within an appropriate timeframe***, to ensure that aid remains necessary for each eligible category of beneficiary. Where aid is no longer required for a category of beneficiary, this category should be removed before further aid is granted**.** ***This section does not apply to prior approved aid schemes.***

Justification:

A static obligation vis a vis Member States to benchmark aid schemes regardless of actual indicators imposes an immense bureaucratic burden on national administrations and

significantly obstructs planning and investment security of aid receiving entities. Member States should thus remain competent to develop individual to safeguard the efficiency of aid disbursement. Moreover, it should be clarified that **80.** does not apply to prior approved aid schemes.

Proposal:

83. The Commission will assess the reasons given as justification and will, for instance, consider that a more limited eligibility does not unduly distort competition where:

(a) a measure targets a specific sectoral or technology based target established in Union law, such as a renewable energy, energy efficiency ***or cogeneration*** scheme;

(b) a measure aims specifically to support demonstration projects;

(c) a measure aims to address not only decarbonisation but also air quality or other pollution;

(d) a Member State provides evidence that eligible sectors or innovative technologies have the potential to make an important contribution to environmental protection and deep decarbonisation in the longer term, particularly in terms of cost effectiveness;

(e) a measure is required to achieve diversification necessary to avoid exacerbating issues related to network stability;

(f) ***a measure is required to safeguard security of supply;***

(g) a more selective approach can be expected to lead to lower costs of achieving environmental protection (for example through reduced grid integration costs), and/or result in less distortion of competition.

Justification:

Cogeneration as a specific sectoral technology critical to increase system efficiency and safeguard security of supply should be explicitly listed as part of the scope of **83.** especially because the distinct technical ramifications of cogeneration demand a specialized consideration in public aid policy to support the full development of this technology in its full capacity – in particular regarding the decarbonization of district heating networks.

Proposal:

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

(a) for measures where the estimated average annual aid to be granted is ≥ EUR 150 million per year, a public consultation of ~~***at least 8***~~ ***6*** weeks' duration, covering:

(i) eligibility;

(ii) method and estimate of subsidy per tonne of CO2 equivalent emissions avoided (per reference project);

(iii) proposed use and scope of competitive bidding processes and any proposed exceptions;

(iv) main parameters for the aid allocation process including for enabling competition between different types of beneficiary;

(v) main assumptions informing the quantification used to demonstrate the incentive effect, necessity and proportionality;

(vi) where new investments in natural gas based generation or industrial production may be supported, proposed safeguards to ensure compatibility with the Union's climate targets (see point 110).

(b) for measures where the estimated average annual aid to be granted is < EUR 150 million per year, a public consultation of ~~***at least 4***~~ ***3*** weeks' duration, covering:

(i) eligibility;

(ii) proposed use and scope of competitive bidding processes and any proposed exceptions;

(iii) here new investments in natural gas based generation or industrial production may be supported, proposed safeguards to ensure compatibility with the Union's climate targets (see point 110).

Justification:

The decision as to when public consultations on aid measures should be left to Member States as a subsidiary competence adaptive to distinct national conditions. Those consultations should also be subject to clearly framed time limits to increase project planning security, wherefore CEEAG should not provide an "open-end framework" but set maximum durations. CEEAG- consultations should also not impose a binding effect on Member States as this would interfere with existing national regulations on stakeholder involvement as well as public aid policy. Where consultations are held, they should function as a "one-stop-shop"-forum for public stakeholder involvement, public consultations conducted as part of the preceding legislative procedure should hence be equated with the consulting requirements of ***85.***

Proposal:

86. No public consultation is required ~~***for measures falling under point 85(b)***~~ where competitive bidding processes are used ~~***and***~~ ***or*** the measure does not support investments in fossil-fuel based energy generation or industrial production.

Justification:

Meeting our common climate targets requires a facilitated implementation of aid schemes to increase renewable energy production. The public consultation requirement of ***85.*** *should therefore not be applied to aid schemes promoting renewables indiscriminative of their overall volume, as this would in particular obstruct aid implementation in larger Member States regardless of their actual impact and thus significantly impede renewables expansion. Moreover, the nominal size of an aid scheme should always be assessed relative to the respective market size as a comparable metric between vastly different market sizes.*

Proposal:

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

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

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

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

(ii) for electricity consumption – projects with a maximum demand less than ~~***400kW***~~ ***1 MW***;

(iii) for heat generation and gas production technologies – projects below ~~***400kW***~~ ***1 MW*** installed capacity;

(c) Member States can exempt cogeneration plants larger 50 MWel if competitive bidding procedures are deemed unfeasible due to a small number of participants.

Justification:

Competitive bidding procedures can be a useful tool to increase the efficiency of aid spending. However, as past experience has shown, competitive bidding procedures for small scale installations render their economic viability less attractive for potential operators and investors leading to the inverse effect of producing higher prices. Furthermore, compulsory bidding procedures pose significant additional challenges for the responsible regulatory body and thus render the support for small scale less attractive for public authorities, leading to their general underappreciation in national aid scheme design.

CEEAG should also provide an exemption for large scale CHP projects. Due to very small number of prospective participants in this category Member States should be allowed to determine fixed aid ratios if competitive bidding procedures are deemed economically or technically unfeasible.

Proposal:

104. The aid must be designed to prevent any undue distortion to the efficient functioning of markets and, in particular, preserve efficient operating incentives and price signals. For instance, beneficiaries should remain exposed to price variation and market risk, unless this undermines the attainment of the objective of the aid. In particular, beneficiaries should not be incentivised to offer their output below their marginal costs ~~***and must not receive aid for production in any periods in which the market value of that production is negative.***~~

Justification:

A stop of aid allocation during short term negative market periods would risk an increase of fossil fueled generation and obstruct financing for renewable energy investments. Member States should therefore be competent to design aid schemes more flexible regarding the general exposure of renewables to market risks and price variations.

Proposal:

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

Justification:

*While biomass is widely considered as a key renewable fuel in the decarbonisation of the energy system especially with regards to the heating and cooling sector, the current framing of **107.** establishes an equivalence between fossil fuels and biomass that runs contrary to existing energy policy, our common climate ambitions and the scientific consensus on the future role of bioenergy. AGFW thus recommends to frame the future CEEAG in conformity with existing decarbonsiation strategies that rely on the use of bioenergy and appreciate biomass fueled cogeneration as a crucial technological pillar to safeguard security of supply and the decarbonisation of peak load generation.*

Proposal:

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

Justification:

As regards to the decarbonisation of heating and cooling, natural gas fired generation will play an important role in the mid-term transition towards 2030 in which necessary investments require a secured and reliable framework. In that respect, AGFW supports the envisioned conditionality of gas related investments to prevent detrimental lock-in effects. This should be strengthened by establishing these caveats as fixed requirements which would moreover increase investment security within State aid control. Additionally, since the availability of carbon neutral fuels cannot be guaranteed by the operator, the substitution caveat should be understood as carbon-neutral-fuel-readiness.

Moreover, fossil fuels such as natural gas should be utilized most efficiently following the trajectory of Energy-efficiency-first. In the case of heating and cooling CEEAG should therefore incentivize a switch from gas fired boilers to high efficiency cogeneration as an incremental intermediate step in view of 2030. In this regard ***footnote 64.*** *should contain additional information on the model plant constituting the assessment benchmark. Moreover, the limitation of aid to the additional costs associated with cogeneration constitutes an unfeasible criterion as a general rule.*

Proposal:

113. ~~***Provided that all other compatibility conditions are met, the Commission will typically find the balance for decarbonisation measures to be positive (that is to say, distortions to the internal market are outweighed by positive effects) in the light of their contribution to climate change mitigation, which is defined as an environmental objective in Regulation (EU) 2020/852, as long as there are no obvious indications of non-compliance with the do no significant harm principle.***~~

Justification:

Please refer to the justification under **69.**

Proposal:

116. This aid may be combined with aid for any or all of the following measures:

(a) the installation of integrated on-site ***and grid supplied*** renewable energy installations generating electricity, heat or cold;

(b) the installation of equipment for the storage of the energy generated by on-site renewable energy installations;

(c) the construction and installation of recharging infrastructure for use by the building users, and related infrastructure, such as ducting, where the car park is located either inside the building or it is physically adjacent to the building;

(d) the installation of equipment for the on-site digitalisation of the building, in particular to increase its smart readiness. Eligible investments may include interventions limited to passive in-house wiring or structured cabling for data networks and, if necessary, the ancillary part of the passive network on the private property outside the building. Wiring or cabling for data networks outside the private property is excluded;

(e) other investments that improve the energy or environmental performance of the building, including investments in green roofs and equipment for the recovery of rain water.

Justification:

*The current framing of **116.a)** does not sufficiently account for grid supplied renewable energy sources as part of the future energy mix of Europe's building stock, which runs counter to present climate and energy policy initiatives addressing the buildings sector such as the Commission´s Renovation Wave. This should be remedied by explicitly extending the section´s scope to grid supplied renewable energy (DHC) covering the full spectrum of related investments in particular the installation of transfer stations.*

Proposal:

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

Justification:

This point should cover DHC in general, as the section defines the scope for aid for efficient DHC as well as conditions for aid for non-efficient systems. Comparatively to the current Guidelines, future rules should make clear that aid can target the different pillars of a district heating system independently. For instance, aid should be available for generation, thermal storage or the network itself.

Proposal:

342. Such aid measures typically cover the construction, upgrade ***and operation*** of the generation unit to use renewable energy, ***carbon neutral fuels***, waste heat, or highly-efficient cogeneration including thermal storage solutions ***and power-to-heat installations***, or the upgrade***, extension and new-built*** of the distribution network to reduce losses and increase efficiency, including through smart and digital solutions. ***Heating and cooling equipment within customer premises referred to under point 117 can also be covered.***

Justification:

The fuel switch towards climate neutral DHC explicitly demands long term investment security. The future CEEAG should thus be extended to cover not only upfront investment costs but also the subsequent operational costs of renewable generation and storage units to ensure their financial viability and provide a proper and reliable framework for such investment decisions.

Additionally, this point should also refer to 'customer facilities' (and section 4.2) so that the connection of a building to a DHC system and the related technical installations within the building that allow the DHC system to perform optimally – and to reduce energy consumption – can be covered.

Proposal:

343. Where a Member State invests in the upgrade of a district heating and cooling system without meeting the standard of energy efficiency, it needs to commit to ~~***start the works to reach that standard within three years following the upgrade works. a***~~ ***decarbonisation plan compatible with the Union´s 2030 climate target and the 2050 climate neutrality target.***

Justification:

*A static time frame - as foreseen in the current draft of **343.** is ill-suited to address the vastly different technical, economic and legal conditions for DHC operators across Europe. Instead, efficiency upgrades should be reviewed based on their individual compatibility with 2030 targets. A network specific decarbonisation plan provided by the operator would constitute a more suitable benchmark for this assessment.*

Proposal:

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

Justification:

We agree with the reference to waste, to energy and the conditioning of the aid for such projects on the respect of the waste hierarchy. When mentioning waste heat the text should refer to the definition of waste heat as set out in Directive 2018/2001 on renewable energy sources.

Proposal:

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

(a) the support is limited to ~~***the upgrade of***~~ the ~~***distribution network***~~ ***district heating system***;

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

(c) the investment does not result in increased generation of energy (**electricity and heat**) from the most polluting fossil fuels (for example, by connecting additional customers)***. Any short-term potential increase in the use of most polluting fuels must be documented by the beneficiary and be aligned with commitments compatible with the Union's 2030 climate target and the 2050 climate neutrality target referred to in (d);***

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

Justification:

*The expansion and construction of DHC is a key pillar for meeting our carbon reduction ambitions. Given the short timeframe in view of 2030 network extension and the fuel switch in heating and cooling generation must happen simultaneously. AGFW therefore suggests to provide a clarification within **347.** for national authorities that the operator can be supported in upgrading and expanding a network, even in cases where this could lead to a temporary and short term increase of production based on the most polluting fuels (i.e. to cover potential technical sequences before new fuels are being phased in) provided such developments are part of and consistent with the overall decarbonisation commitment of the operator and related investment plans are in line with the 2030 climate target and the 2050 climate-neutrality objective.*

*Moreover, **347.** should have a clear scope of applicability. The current unspecified term "rely" provides no predictable definition in this respect. This could be remedied by introducing a criterion of "full reliance" to clarify the regulatory intention of this provision in addressing the most carbon intensive networks.*

Proposal:

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

Justification:

With regards to the decarbonisation of heating and cooling, natural gas fired generation will play an important role in the mid-term transition towards 2030 in which necessary investments require a secured and reliable framework. In that respect, AGFW supports the envisioned conditionality of gas related investments to prevent detrimental lock-in effects. This should be strengthened by establishing these caveats as fixed requirements which would moreover increase investment security within State aid control. Additionally fossil fuels such as natural gas should be utilized most efficiently following the trajectory of Energy-efficiency-first. In the case of heating and cooling CEEAG should therefore incentivize a switch from gas fired boilers to high efficiency cogeneration as an essential intermediate step in view of 2030.

Proposal:

349. In analysing the impact of State aid for district heating and cooling systems ***supplied trough fossil fueled facilities*** on competition and in balancing it against the supported economic activity, the Commission will ***only*** carry out a case-by-case assessment ***of the support system where support-related distortions of competition and effects on trade between Member States are identified through assessments conducted on the basis of 347. or 348.***, balancing the benefits of the project in terms of energy efficiency and sustainability against the negative effects on competition and in particular the possible negative impact on alternative technologies or providers of heating and cooling services and networks***, taking into account national strategies for heating and cooling, security of supply issues and other relevant aspects. Where Member States, on the basis of the comprehensive assessment of the potential for the application of high-efficiency cogeneration and efficient district heating and cooling, carried out in accordance with Article 14 of Directive 2012/27/EU, employ general measures of planning and aiding the construction, expansion or upgrade of district heating and cooling systems, the Commission will always limit the case-by-case assessment to an assessment of these general measures.***

Justification:

*AGFW recommends to reserve the applicability of a case-by-case assessment within **349.** for aid investments directed towards district heating and cooling systems relying on fossil fuels*

*which do not fulfill the conditions of either **347.** or **348.** to increase the predictability of State aid control and strengthen investment security and planning. In particular the CEEAG should not discourage Member States to grant aid to large scale projects with a high potential of carbon reduction by introducing blanket case-by-case assessments.*

Therefore AGFW suggests that case-by-case assessments- should have a clear scope of applicability and should be underscored with a set measurable criteria to provide a reliable assessment framework. This would facilitate the design of national aid programs and incentivize underlining private investments in view of 2030.

Proposal:

414. ~~***The Commission proposes the following appropriate measures to Member States under Article 108, point (1), of the Treaty:***~~

~~***(a) Member States must amend, where necessary, their existing environmental protection and energy aid schemes in order to bring them into line with these guidelines no later than 31 December 2023;***~~

~~***(b) Member States should give their explicit unconditional agreement to the appropriate measures proposed in point 414(a) within two months from the date of publication of these guidelines in the Official Journal of the European Union. In the absence of any reply, the Commission will assume that the Member State in question does not agree with the proposed measures.***~~

Justification:

The current **414**. deeply contradicts the regulatory appraisal of the CEEAG framework (e.g. **413.**) and should thus be revised. In this regard AGFW emphasizes that an "*ex tunc*" review of already approved aid schemes gravely undermines the legal and procedural reliability of European aid control with unpredictable consequences for private investment decisions and the financing of renewable projects. Furthermore, as the fitness check conducted by the Commission has shown that the present EEAG "*have generally delivered on supporting climate targets*" AGFW sees no clear indicators that would warrant a complete overhaul of approved national aid schemes. Hence the unconditional and general alignment as proposed in **414.** would be an enormously time consuming bureaucratic undertaking with no visible added value to European climate and energy policies.

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AGFW is the German energy efficiency association for heating, cooling and cogeneration. We represent more than 550 utility companies (national and regional), energy service providers as well as industrial companies of the sector across Germany and Europe. As rule-setting body we represent over 95 % of Germany´s DHC market.