

The new State aid Framework to support the Clean Industrial Deal

ClientEarth's reply to the public consultation

Background

In February 2025, the European Commission announced in the [Clean Industrial Deal Communication](#) its intention to simplify State aid rules by adopting a new Clean Industrial Deal State aid Framework ("CISAF") to accelerate the roll-out of renewable energy, deploy industrial decarbonisation and ensure sufficient capacity of clean tech manufacturing in Europe. Stakeholders were invited to share their views on the draft CISAF in a public consultation process that took the form of a questionnaire. This briefing contains the answers provided by ClientEarth to the questionnaire.

Reply to the questionnaire¹

General comments

Question: Please provide any comments you may wish to bring to the Commission's attention in relation to the draft proposal for a new Clean Industrial Deal State aid Framework.

ClientEarth welcomes the consultation on the Clean Industrial Deal State Aid Framework (CISAF). We acknowledge the role that State aid can play to accelerate industrial decarbonisation and support renewable energy and targeted technologies, besides appropriate regulatory measures and other financing tools. We have the following general comments:

1. Environmental mainstreaming needs to be embedded in State aid policy

There is currently **no environmental mainstreaming** (integration of environmental considerations and objectives) **in State aid policy**, resulting in a lack of safeguards against environmentally harmful aid. Art. 11 TFEU, read in conjunction with Art. 3(3) TEU, Art. 3 TFEU, Art. 4(3) TFEU, Art. 7 TFEU and Art. 37 EU Charter of Fundamental Rights, as well as Art. 3 of the EU 8th EAP compel to take due account of environmental requirements when elaborating State aid policy and enforcing State aid control, for all types of aid irrespective of the aid objective. Such approach should be twofold:

- a. The **“Do No Significant Harm” (DNSH) principle** should be horizontally integrated across State aid policy. So far it is integrated in the CEEAG, the IPCEI Communication, the regional aid guidelines and partially in the TCTF. It should apply to all CISAF aid categories, not only to renewable energy. Its application should go beyond verifying compliance with environmental law. The aid and supported activity should at least comply with the principle within the meaning of Art. 17 of Regulation 2020/852. In addition, Member States should rely by analogy on the EU Guidance for reporting non-energy Environmentally Harmful Subsidies, as well as on the methodology that is currently being developed to apply the principle in the next MFF.

The encouragement to include conditionalities is insufficient (para 15) as evidenced by the decision-making practice under the TCTF. The DNSH principle should therefore be the baseline, leaving room to include additional social or environmental conditionalities (e.g. publicly available transformation plan at installation-level for decarbonisation aid) where appropriate.

- b. Taking into account **environmental considerations** when assessing the potential negative effects of an aid measure on competition and trade is sometimes necessary, given the growing environmental risks that impact most economic sectors, regardless of the aid objective pursued. This approach is already applied in the CEEAG for the most polluting fossil fuels, in line with the treaties.

For a more in-depth analysis, we refer to our [attached briefing on Environmental mainstreaming in EU State aid policy](#).

¹ Each answer to the questions in the questionnaire are limited to 5000 characters.

2. Inconsistencies within the State aid rulebook

The draft CISAF overlaps with existing frameworks (para.8), notably the CEEAG and regional aid guidelines. This creates confusion which is counterproductive to the simplification goal of CISAF. It is also legally **inconsistent** as identical aid falls in the material scope of several frameworks but is subject to different conditions and ways of calculating aid. This leads to cherry-picking between frameworks in search of the least stringent conditions, notably for fossil gas investments.

One major retrogression is the **lack of any obligation to organise public consultations** for new aid schemes in the CISAF, whereas this is required in the CEEAG for (i) large renewable energy and decarbonisation schemes as well as for fossil gas investments and (ii) security of electricity supply. Not only do public consultations contribute to transparency and democratic legitimacy (Art. 1(2), 10(3) TEU), they are also an excellent source of qualitative information on the proportionality and competition impact of the aid measures to feed the Commission's compatibility assessment. These benefits, which reduce the likelihood of legal challenges and increase legal certainty, are not outweighed by the additional time required for public participation.

The partial application of the DNSH principle in CISAF whereas it applies to the entire CEEAG is another unwelcome inconsistency (see comment above).

3. Fossil gas investments for industrial decarbonisation cannot be supported.

We strongly **oppose the possibility to support fossil gas for industrial decarbonisation**. Such aid has lock-in effects as it (i) displaces public funds from fossil-free alternatives, whereby electrification should be prioritized and renewable gases should be used for hard-to-abate sectors only, (ii) limits the industry's ability to switch to cleaner alternatives at a reasonable cost, (iii) increases the likelihood of stranded assets and (iv) goes contrary the EU's emission reduction targets.

Alternatively, the unclarity regarding the eligibility of the industries (para. 73) and the inadequate safeguards to limit aid to fossil gas (para. 100 -101) should be addressed. We refer to our comments below and to the attached report on hydrogen-readiness.

Aid to accelerate the rollout of renewable energy

Question: Please provide any comments specific to section 4.1 of the draft framework ("Aid schemes to accelerate the rollout of renewable energy").

In addition to our specific replies below, we have the following comments following the order of the CISAF – thus not in order of importance:

- Para 32-33: To improve consistency and clarity, we suggest moving para 33 under para 32 (c) as it relates to the scope of application.

- Para 34: Given the existence of legal obligations under the Electricity Regulation and Electricity Directive to operationalise demand response, storage and aggregation, we suggest requiring Member states to “ensure” rather than to “commit to ensure” the implementation of those obligations.
- Para 39: As pointed out in our general comments, we welcome the inclusion of the **DNSH principle** in the framework, yet the principle should apply to the overall framework (as it is notably the case for the IPCEI communication). In addition, Member States should not only ensure compliance with the principle but also provide evidence of such compliance. The CISAF is also unclear on how the principle is to be applied in practice. We suggest to indicate that the aid and/or the supported project should at least comply with the principle within the meaning of Art. 17 of Regulation 2020/852. In addition, Member States should rely on Guidance for reporting non-energy Environmentally Harmful Subsidies, as well as on the methodology that is currently being developed to apply the principle horizontally across the next Multiannual Financial Framework.
- Para 42: We assume that the Commission is allowing the use of aid intensities in the CISAF in the spirit of simplification and acceleration of aid. However, to ensure proportionality of aid and avoid overcompensation, similarly to the GBER, we recommend allowing the use of aid intensities to determine the aid amount only if in combination with maximum aid amounts (ceilings). This ceiling can consist of a general ceiling for all technologies and/or a varying ceiling in function of the technology if total investment costs differ greatly.
- Para 43: We welcome the exceptions for small projects, especially **energy communities**, both for investment aid and for direct price support, which are in line with the existing exceptions in the CEEAG and the GBER. In order to fully support energy communities, we recommend to specify that the 20% additional aid intensity that applies to small undertakings also applies to energy communities, irrespective of whether they legally qualify as a “small undertaking” or not. Moreover, the requirement for projects to be 100% owned by renewable energy communities is sometimes over-restrictive as it does not allow for more co-development with professional project developers. We recommend to for instance reducing this requirement to 60-70%. Finally, we refer to Rescoop’s contribution for more comments and recommendations to better support energy communities.
- As pointed out in our general comments, we strongly regret the **lack of public consultation obligation** for larger schemes, as it is the case in the CEEAG.

Question: If you consider the proposed completion deadlines or exemptions therefrom (see point (37)) are not appropriate, please provide concrete justification for any alternative timeline or other exemptions you would consider more appropriate.

Although **we agree with the need to accelerate the deployment of renewables** and to expect aid to incentivise such acceleration, the proposed **completion deadlines risk creating legal uncertainty** (and therefore delays), including potentially at the expense of laws meant to protect the environment and safeguard public participation in permitting processes. Arts. 16a and 16b of the Renewable Energy

Directive (RED) already establish clear maximum deadlines, capping the permit-granting procedures for projects located within and outside renewable acceleration areas at 12 months and two years, respectively. The RED also introduces flexibilities by excluding from this period, among other things, additional time needed to resolve disputes and make necessary infrastructure upgrades to ensure grid stability, reliability, and safety (Art. 16(8)). By requiring renewables projects to start operating within 36 months of the date of granting the aid (or within any fixed timeline), Member States and project promoters may be incentivized to prioritize this timeframe at the expense of proper permitting processes or safety- and reliability-related infrastructure upgrades, to avoid foregoing the aid or facing penalties. This in turn could reduce the quality of the permitting process, including any required environmental reviews and public consultations, which could in turn also introduce legal risks and therefore further project delays. Legal challenges, necessary safety upgrades, and other circumstances could make it impossible to comply with the proposed 36-month deadline.

We therefore recommend to remove this maximum deadline and not complicate what's been agreed in the RED, or alternatively at the very least amend para 37 to reflect all of the above concerns and to apply without prejudice to what is specified under RED.

Question: Please provide any comments specific to section 4.2 of the draft framework ("Aid for non-fossil flexibility support schemes").

We welcome that the CISAF has a dedicated section to support non-fossil flexibility technologies. These technologies must play a central role in the energy transition, especially to hedge against overdevelopment of and overreliance on generation and infrastructure capacity. However, section 4.2 fails to fulfil its full potential to contribute to the development of non-fossil flexibility technologies.

1. Para 55 provides that Member States must commit to ensure within 2 years from the adoption of the Commission's decision authorising the measure that a number of conditions listed in point 55(a) and (b) be fulfilled. To ensure appetite for aid for non-fossil fuel flexibility technologies, it is essential that these technologies are supported by a market that is enabled by an appropriate regulatory framework. **We therefore urge the Commission to require that Member States commit to ensure that the requirements listed in points 55(a) and (b) are fulfilled much earlier, namely upon the granting of the aid or implementation of the aid scheme.** Moreover, the fundamental nature and conditional character of the requirements under point 55 should be enforced by requiring Member States to 'ensure' instead of 'commit to ensure' that the requirements are fulfilled. Moreover, earlier fulfilment of the conditions in point 55(a) and (b) would support of the pending transposition obligation of Art. 17(1) and (2) of Directive 2019/944, that mandate Member States to take measures to ensure full participation of demand response in electricity markets.
2. Para 57 provides that if a capacity mechanism is implemented in the Member State concerned, its design should be open to the participation of non-fossil flexibility such as demand response and storage, and promote their development in this capacity mechanism. Footnote 37 provides that in duly justified cases, the measure can envisage a transition period up to 2 year, during which market-wide capacity mechanisms and non-fossil fuel flexibility measure can co-exist, for the integration of urgent measures for flexibility into a capacity mechanism, provided they remain proportionate and do not lead to overcompensation. This footnote needs urgent revision because it is unclear what this transition period refers to. Insofar as it consists of an exception to the rule that a market-wide capacity mechanism and non-fossil flexibility measure cannot co-exist, we

note that this seems to go contrary to Art. 19(g)(1) ER which clearly allows non fossil-flexibility support measures to co-exist with capacity mechanisms. In addition, in our view, Member States should indeed retain the right under the CISAF to have both non-fossil fuel flexibility schemes and capacity remuneration mechanisms. Insofar as it refers to an exception to the rule that the design of the capacity mechanism should be open to participation of non-fossil flexibility, we strongly oppose to this. **We call upon the Commission to ensure that aid for non-fossil flexibility schemes can only profit from approval under the CISAF if they secure from the outset that they are open to non-fossil flexibility technologies.** That must be a strict condition for reversing the current trend that fossil fuel capacity generation (problematic from an environmental perspective) and incumbents (problematic from a competition perspective) are the main beneficiaries of aid under capacity mechanisms. A recent report by Aurora Energy Research shows that since 2015, capacity markets in across six European countries have awarded €43.51 billion to gas plants, €7.41 billion to coal, and just €2.17 billion to demand-side response, €4.4 billion to interconnectors and €11.7 billion to storage (see: [Capacity-Remuneration-Mechanisms-Report-Aurora BFF January-25.pdf](#)).

Question: Please provide any comments specific to section 4.3 and Annex I of the draft framework (“Aid for capacity mechanisms following a target model”).

The Electricity Regulation (“ER”) leaves considerable discretion to Member States for establishing resource adequacy concerns and for designing capacity mechanisms. This is undesirable because it is liable to result in overreliance on capacity mechanisms which disproportionately support the development of fossil gas fired capacity, often by incumbents. A recent report by Aurora Energy Research shows that since 2015, capacity markets across six European countries have awarded €43.51 bn to gas plants, €7.41 bn to coal, and just €2.17 bn to demand-side response, €4.4 bn to interconnectors and €11.7 bn to storage (see: [Capacity-Remuneration-Mechanisms-Report-Aurora BFF January-25.pdf](#)).

Against this background, we welcome the initiative to simplify the State aid assessment of capacity mechanisms under the condition that Member States align their capacity mechanism with a standardized design in accordance with the conditions in Annex I. In particular, we welcome that the conditions in Annex I mandate the ERAA as the sole basis for identifying an adequacy concern. National Resource Adequacy Assessments (NRAAs), despite having to follow the same methodology as the ERAA, often include country-specific assumptions and tend to have divergent results. Basing the identification of the need for a capacity mechanism only on the ERAA helps simplify and harmonise the analysis. We also welcome the condition that Member States must implement Commission’s recommendations on their market reform plan.

However, we also have serious concerns. First, for clarity and to ensure legal compliance, we consider that the checklist in Annex I should be amended to either (i) only include requirements relevant to the State aid examination, or (ii) if it extends to requirements under the ER, include all requirements under the ER. We note that at least two requirements for capacity mechanisms under the ER are currently missing:

1. Cross-border effects of capacity mechanisms. Article 21(2) ER establishes that, prior to introducing a capacity mechanism, Member States must conduct a comprehensive study of the possible effects in the neighbouring Member States and conduct a consultation at least with those directly connected and their stakeholders.

2. The adaptation of committed capacities based on implementation plans. Article 21(8) ER establishes that the amount of committed capacities under capacity mechanisms should be reduced on the basis of implementation plans.

Second, we are concerned that the requirements in Annex I do not sufficiently safeguard access to capacity mechanisms for renewables and non-fossil fuel flexibility technologies.

1. The consultation on Annex I has a fundamental procedural flaw because it refers to documents and methodologies that have not been finalised or published yet. Notably, footnote 3 refers to de-rating factors to be published by ACER/ENTSO-E, which will be binding once established. Details about de-rating factors are essential to establishing if the proposed design in Annex I will sufficiently support the access of renewable energy and non-fossil flexibility technologies. For this reason, the consultation on the Annex is not complete and is not adequate. To remedy this shortcoming, we urge the Commission to organise a public consultation on the de-rating factors, once available.
2. In contrast to the CEEAG, **the CISAF does not oblige Member States to consult the public on the competition impacts and proportionality of the capacity mechanism. We strongly oppose against this omission.** The requirements in Annex I do not exclude the risk of concerns about competition impacts and the proportionality of the capacity mechanisms. It is key to provide the public with an opportunity to express these concerns so that they can be taken into account in the assessment of the notified measure.
3. Requirement 1 of Annex I refers to the latest available ERAA central reference scenarios approved by ACER. The ERAA currently bases its central reference scenario on the assumption that Member States will deliver on their NECPs. We have taken note of point 4.1 of the Commission report on the assessment of possibilities of streamlining and simplifying the process of applying a capacity mechanism, which proposes the introduction of an additional 'trends & projections scenario'. Member States could use this scenario to justify the introduction of a capacity mechanism by considering the actual progress – including delays – in the implementation of the described measures in Member States' NECPs. **Requirement I should specify that Member States may only rely on the NECP-based central reference scenario to profit from approval under CISAF.**

Aid to deploy industrial decarbonisation

Question: Please provide any comments specific to section 5 of the draft framework ("Aid to deploy industrial decarbonisation").

In addition to our specific replies below, we have the following comments following the order of the CISAF – thus not in order of importance:

- Para 72: The scope of the CISAF is a retrogression compared to the TCTF that was limited to technologies that truly contribute to decarbonisation. Moreover, the TCTF requires at least a **40% reduction of direct greenhouse gas emissions** for projects to be eligible for aid, whereas the CISAF does not set any general target. As this aid category applies to all technologies that can contribute to decarbonisation are eligible (para 77), we strongly recommend setting at the very least a generally applicable 40% target, irrespective of more dedicated targets that apply for specific technologies. Scarce public resources should not be wasted for incremental greenhouse

gas reductions, but be targeted at decarbonisation measures that can really contribute to the climate goals.

- Para 73: As stated in the general comments above as well as more elaborately in the specific replies below, **we do not support the inclusion of aid for fossil gas to decarbonise industrial production**. We refer to our reply to the next question below on para 73, 2nd sentence and the problematic unclear scope of application of fossil gas investments. We also refer to our comments regarding the safe harbour requirements (para. 101) for fossil gas investments further below.
- Para 76: In addition, Member States should demonstrate how the reduction of greenhouse gas emissions aligns with the 2030, (2040) and 2050 reduction targets (see also the ESABCC 2024 assessment report on EU climate neutrality, section 5 on industry).
- Para 79: We would like to point out that the 36-month maximum deadline could incentivize operators and Member States to prioritize meeting this timeline at the expense of applicable permitting and review requirements. Similar risks are therefore present to what we raise in our comments above re: Section 4.1/Para 37. We further note that other legislative frameworks like the Net Zero Industry Act already promote acceleration in a similar fashion by setting out maximum permitting deadlines.
- Para 79 and 80: The Commission and Member States should be wary of the fact that aid beneficiaries may set artificially low targets to be able to meet the 80% threshold. We therefore recommend to specify that an independent technical expert should be appointed to set the projected reductions or savings, and to report on whether the targets are met.
- Para 83-84, 102: **We do not support aid for carbon capture** as it fosters the continued use of fossil fuels, is commercially unproven with high deployment costs, is energy inefficient, does not tackle other pollution issues beyond greenhouse gas emissions at the extraction point, and seriously risks displacing cleaner alternatives. In the event carbon capture is nevertheless eligible for aid under the CISAF, the following **cumulative conditions** need to be added:
 1. Only hard to abate industrial applications where cleaner alternatives are not readily available should be eligible (para 83);
 2. Only the best available capture technologies can be supported to ensure a capture rate of minimum 95% (para 83).
 3. Carbon capture should be restricted to residual emissions that are not technically abatable after all measures to reduce emissions at source have been implemented, including demand reduction, increasing recycling rates, electrification, and maximising energy, process and material efficiency (para 102).
 4. The use of carbon capture cannot lead to an increase in the use of fossil fuels.
 5. Support should only be given to captured CO₂ for permanent storage (para 84 (a))
 6. In order to avoid stranded assets, an aid beneficiary should demonstrate that it is able to manage the estimated lifetime economic costs of CO₂ management.
- Para 97: We object to the proposed 'negligible' treatment of indirect GHGs from hydrogen and recommend that this be deleted or only apply to the GHG emissions of renewable hydrogen

meeting Commission Delegated Regulation 2023/1184. Without a track record implementing a delegated act on low-carbon hydrogen and the Methane Regulation (especially to imports), it is too early to know whether the emissions of fossil-based hydrogen could ever be negligible. Given the high GHG emissions of fossil-gas based hydrogen production, we are highly sceptical that they could be. (see, e.g., Robert Howarth, *How green is blue hydrogen*, Energy Sci. & Eng'g 9, 10 (2021)). Biomass-based hydrogen should also be excluded because of the technology's negative climate and environmental impacts. The RED's sustainability criteria should be treated as a minimum protective bar, and not as a license for further financial support.

- Para 90: **The aid intensity** should reflect the prioritisation of technologies for decarbonisation. The highest aid intensity should apply to technologies that do not rely on fossil fuels and have the highest efficiency and effectiveness in abating greenhouse gases and pollution. This means that point (a) should promote fully renewable hydrogen over other types of hydrogen and that point (c) should have a clearly higher aid intensity than points (b) and (d).
- As stated in the general comments, the **DNSH principle** should also apply to this aid category in view of consistency and to ensure that the most harmful projects are not supported with public funds.

Question: If you consider that the prioritisation of technologies for decarbonisation of industrial heat in this section on decarbonisation and energy efficiency is not appropriate (see point (73)), please explain and provide evidence for other criteria you would consider more appropriate.

We **support the prioritisation of technologies** as proposed in para 73, 1st sentence. However, as stated in our general comments and specific comments for section 5, **we do not support fossil gas investments for decarbonisation** as embedded in para 73, 2nd sentence.

Only a minor part (7%) of industry cannot be electrified due to technical hurdles (e.g. steel and cement). For the vast majority of industry, the main barrier to industrial electrification is not technical but is caused by high electricity costs as compared to relatively low fossil fuel costs. Support should therefore focus on lowering electricity costs, circularity as well as energy and material efficiency measures, to prevent the use of fossil fuels and strengthening the industry's competitiveness and resilience. Moreover, renewable electricity is the most efficient way to reduce greenhouse gas emissions. Its deployment must therefore be prioritised and its full potential can only be realised through a modernised grid infrastructure, flexibility solutions and adequate storage systems. Without these, the roll out of renewable energy will continue to face bottlenecks that slow down industrial decarbonisation. We therefore recommend to omit para 73, 2nd sentence altogether.

Alternatively, if the Commission decides to include support to fossil gas for decarbonisation it should be strictly limited to hard-to-abate sectors where electrification is not possible, but for which renewable hydrogen presents the most efficient and least harmful decarbonisation approach. The words "duly justified cases" therefore need to be clarified and interpreted strictly to refrain from supporting further lock-in of fossil gas. Moreover, the energy or greenhouse gas emission saving targets only depend on the relative activity's emissions baseline and are not tied to absolute climate targets. We therefore recommend to tie the aid to the greenhouse gas thresholds suggested by the Sustainable Finance Platform Technical Expert Group (<100g CO₂e/kWh reducing in five-year increments to 0 g CO₂e/kWh by 2050). Alternatively, aid could be tied to the threshold for high-efficiency co-generation of heat/cool of the Taxonomy Delegated Regulation (EU) 2022/1214.

Question: For aid schemes covering investments relying wholly or partly on the use of hydrogen, section 5, point (82), the new framework takes into account the fact that Article 22a of Directive (EU) 2018/2001 on the promotion of the use of energy from renewable sources (RED) establishes targets for renewable fuels of non-biological origin (RFNBO) for hydrogen in industry. The draft framework does so by laying down a minimum share of renewable hydrogen calculated by reference to the average share of electricity from renewable sources in the Member State concerned, as such project-level contribution to meeting national targets established by EU law is considered a positive effect in the balancing exercise under Article 107(3) (c) TFEU. If you consider that the scope for aid for investments for industrial use of hydrogen should be defined differently, please provide justification and any available evidence for the scope of projects for which you consider that State aid for other types or combinations of hydrogen is required.

State aid for investments relying on hydrogen should be **limited to projects that use 100% renewable hydrogen** meeting the criteria of Commission Delegated Regulation (EU) 2023/1184, for the same reasons as stated in our above general comments on section 5 concerning the ‘negligible’ treatment of hydrogen emissions in Paragraph 97. We recommend making express reference to the additionality requirement in the CISAF.

If aid is permitted to go towards investments relying on a mix of renewable and other types of hydrogen, Member States falling behind on their renewable energy target should not be rewarded as currently proposed by taking into account the actual renewable electricity share of the last two years. This risks an unfair treatment between Member States based on their relative shares of fossil fuels in their power system mix. Instead, we recommend setting a higher minimum requirement that should reflect the renewable electricity share required for the Member State to deliver its greenhouse gas emissions targets, instead of the actual renewable electricity share. The share of renewable hydrogen used by the supported project should also be revised annually and only in an upwards trajectory.

Question: If you consider that the zero indirect emissions presumption for electrification projects in this section on decarbonisation and energy efficiency is not appropriate (see point (98)), please explain and provide evidence for an alternative presumption you would consider more appropriate.

Para 98(c) should be omitted altogether. Assessments from civil society, academia, and the Commission demonstrate that Member States’ NECPs in their current form will collectively fail to meet binding climate targets and energy contributions. There is also a high risk of Member States failing to meet the ambition set out in their NECPs. Further, final NECPs may be updated in the event of infringement proceedings. This all means that projections concerning increased supplies of renewable and low-carbon electricity in these NECPs cannot provide a reliable basis for estimating the indirect emissions from electricity used in future decarbonisation projects.

We also refer to our comment on the zero indirect greenhouse gas emissions presumption for hydrogen (para 97) in our general comments on section 5 above.

Question: If you consider that the safe harbour for natural gas based projects in this section on decarbonisation and energy efficiency is not appropriate (see point (101)), please explain and provide evidence for an alternative presumption you would consider more appropriate.

We cannot **support the inclusion of aid for fossil gas to decarbonise industrial production**. However, if the Commission remains supportive of it, it should be clearly limited to very few hard-to-abate industries (see comments on para 73, 2nd sentence). In addition, the safe harbour (para 101; para 113 by analogy) is insufficient to prevent a further lock-in of fossil fuels and displacement of cleaner alternatives, for the following reasons.

Point (a) clarifies that the infrastructure needs to be actually capable of being operated with hydrogen or other renewable or low-carbon gases, without substantial additional investments or the need to replace the equipment, which is an improvement compared to para 382 (c) CEEAG. It does however leave room for interpretation as to what are considered “substantial” investments. Such has been applied with problematic leeway in recent decisions on LNG terminals (SA.102163, SA.105781). Also, being capable of operating does not in any way guarantee that it will operate with hydrogen or other renewable gases, nor whether use of such gases would be preferred over electrification or other solutions.

Regarding point 101 (b), we welcome that the beneficiaries “must commit to phase out natural gas”. However, the second part of the sentence completely negates this. Requiring substitution by the end of the project’s lifetime (which can be decades) essentially means that no transition nor phase out of fossil gas is required. Also, requiring an effective system of penalties is welcome but the Commission should ascertain that such penalties are truly effective from the outset, including for large corporations that may rather pay penalties than comply with the transitioning requirements.

Therefore, to have **meaningful guardrails to prevent a further fossil fuel lock-in, ensure that hydrogen or other renewable gases can and will be used, and that such use makes sense**, we strongly recommend to (i) **limit the eligibility to hard-to-abate sectors** (see comments on para 73) and (ii) amend the safe harbour clause to reflect the following **substantive requirements**:

1. The infrastructure or equipment should be capable of using hydrogen or other renewable gases from the outset, without any additional investments or any need to replace equipment.
2. The infrastructure or equipment should be converted and use must occur by 2035 latest (consistent with CAN Europe’s PAC 2.0 model).
3. Projects must guarantee upfront that conversion costs will be covered without public financing.
4. Project promoters must show upfront that there will be sufficient supply and demand for hydrogen by the time of conversion (e.g. through commercial contracts).
5. Project promoters must assess in advance, and on an ongoing basis, the environmental and human impacts of upstream hydrogen production and transport– referring for example to the delegated act on RFNBO production and the Methane Regulation.
6. Project promoters should be required to show upfront that existing permitting regimes for hydrogen will be complied with.

The effectiveness of these requirements in aid schemes depends on their **implementation and enforcement**. An “effective system of penalties” (para.101 point (b)) means that authorities should be empowered to monitor and verify compliance, supported by independent technical experts, and to take corrective action when necessary. Recent decisions (SA.102163, SA.105781, SA.101723) have poorly reflected these enforcement requirements. For instance, requiring aid beneficiaries to sign a declaration on honour that by a certain date the plant will run on hydrogen – as it is the case for the Romanian scheme for high-efficient cogeneration in district heating (SA.101723) – is insufficient.

A safe harbour without the above requirements will inflate the risks of carbon and institutional lock-in, price risks due to the use of fossil gas, financial risks of stranded assets and external dependency risks. We refer to our attached report that analyses the concept of hydrogen readiness, the associated risks and the proposed safe harbour requirements.

Finally, the possibility (para 100) to approve fossil gas investments outside the safe harbour by showing that such aid (i) does not create lock-in effects for fossil fuels and (ii) does not displace cleaner alternatives, should be deleted. Such conditions require an in-depth assessment, which conflicts a fast aid approval under the CISAF. Recent decisions have also shown a poor application of these conditions. The Krk terminal expansion was approved based on the premise that (i) the project indirectly contributes to the increase in the use of hydrogen as the expansion supports connected hydrogen-ready fossil gas transmission pipelines and (ii) the terminal would stop operating in 2040, meaning it would not lead to a lock-in of fossil gas (SA.106299). Similarly, the Commission noted without any further explanation that the Bulgarian Chiren fossil gas storage expansion does not create fossil gas lock-in effects.

Question: The draft framework allows to provide support for investment costs related directly to the achievement of the greenhouse gas emission savings or energy efficiency. Such support for these investment costs does not cover production capacity increases, but it also does not prevent companies from proceeding at the same time with capacity increases insofar as the increases are not financed by State aid under the decarbonisation section. This is without prejudice to the compatibility of aid for such capacity increases under other sections of the framework, other frameworks or the Treaty. For simplification reasons, the draft framework nevertheless allows increases of capacity up to 5% without having to differentiate between costs for decarbonisation and those related to capacity increases (see point (103)). Do you think the 5% flexibility margin proposed to be appropriate? If not, please substantiate your view with concrete evidence and data.

We support the fact that aid should not cover investment costs that increase production capacity of industry. A 5% margin for increase of production capacity for simplification reasons seems fair and reasonable, the margin should not be increased.

Aid to ensure sufficient manufacturing capacity in clean technologies

Question: Please provide any comments specific to section 6 of the draft framework ("Aid to ensure sufficient manufacturing capacity in clean technologies").

In addition to our specific replies below, we have the following comments listed in order of the CISAF, irrespective of their importance:

- Para 122: Although the production of secondary raw materials is eligible for aid, there is no specific incentive to favour this above using virgin materials. We therefore propose to set a higher aid intensity for production based on secondary raw material, to foster circularity, than for the use of virgin materials.
- Para 126 and 136: We support the provisions that foster EU cohesion by favouring investments in assisted areas.
- Para 129: We support the risk-sharing provision whereby the aid beneficiary is required to provide a minimum financial contribution. It strikes a balance between on the one hand supporting risky and innovative investments and/or take away the first-mover disadvantage and on the other handling scarce public resources with due care.

Question: The list of clean technologies in point (122) eligible for manufacturing aid should be defined by reference to identifiable market failures in ensuring resilient supply of such technologies. Please indicate whether you consider that the scope for aid for clean tech manufacturing equipment and components activities under section 6 should be aligned with the scope of the corresponding section of the Temporary Crisis and Transition Framework (as set out in the draft for consultation of stakeholder views), with the scope of the Annex of the Net Zero Industry Act, or with some other sub-set of such technologies. Please provide justification and any available evidence for the scope of projects for which you consider that State aid for additional manufacturing capacity is required.

As mentioned above in section 5 regarding carbon capture and fossil gas investments, **we do not support the inclusion of equipment for CCUS**. It should not be generally promoted as a clean technology as it fosters the continued use of fossil fuels, is commercially unproven with high deployment costs, is energy inefficient, does not tackle other pollution issues beyond greenhouse gas emissions at the extraction point, and seriously risks displacing cleaner alternatives. Carbon capture can therefore only be applied as a last resort in a targeted way in specific hard-to-abate sectors, and should not be incentivised at large as a clean technology.

Moreover, the “*production of new or recovered related critical materials*” in para 122 (c) CISAF seems to include the extraction (mining) and processing of critical minerals, which are both often environmentally harmful activities. We therefore recommend to clearly limit the scope to support recycling of critical minerals only, and exclude any activities (such as mining, processing, refining) with respect to virgin (new) and recovered minerals.

With respect to the technologies listed in the Annex of the Net Zero Industry Act, we oppose any support to “sustainable biogas and biomethane technologies” as these are energy-intensive processes and likely

to incentivise the expansion of unsustainable intensive farming. For hydropower technologies, a distinction should be made between existing hydropower that can make a contribution to a decarbonised energy supply whereas new hydropower is almost never likely to comply with the DNSH principle due to its impact on water body status and biodiversity. Any support to hydropower technologies should reflect that distinction. Finally, it is unclear what “other hydrogen technologies” encompass as electrolyzers and hydrogen fuel cells are already listed separately. Any support to “other hydrogen technologies” therefore needs to be clarified to limit it to technologies for additional renewable hydrogen.

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