

The CerRE logo consists of a dark blue square containing the lowercase text 'cerre' in white. The background of the slide features a photograph of a white wind turbine against a blue sky with white clouds, overlaid with a large, abstract geometric pattern of overlapping blue triangles in various shades.

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Centre on Regulation in Europe

STATE AID GUIDELINES FOR ENVIRONMENTAL PROTECTION AND ENERGY (EEAG)

**REVIEW PROCESS, POSSIBLE CHANGES
AND OPPORTUNITIES**

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Improving network and digital industries regulation

REPORT PRESENTATION

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SUMMARY

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OBJECTIVES OF THE REPORT



OBJECTIVES

- ▶ **Review process for the EEAG:** prolonged validity until end of 2021
- ▶ **Scope of the review**
 - possible and necessary areas of change
 - opportunities for improved State aid regime in the energy sector
- ▶ **Contribution to fast-tracking the transition towards low carbon energy systems in a cost-efficient way, consistent with internal market principles.**
- ▶ **EEAG in the context of green economic recovery post-COVID-19:** SA practice in relation to the pandemic, resilience.

2

THE ROLE OF THE EEAG



THE ROLE OF THE EEAG

1

Part of the compliance strategy with EU climate and energy targets

- Fast-tracking decarbonisation
- Make use of all technologies
- Accommodating a stepwise approach
- A holistic approach for the whole energy system

2

Part of a legal ecosystem

- Close link to GBER should be maintained

3

An enabling framework

- Different decarbonisation pathways
- Principle of sovereignty over energy mix

Article 107
(ex Article 87 TEC)

1. Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.

2. The following shall be compatible with the internal market:

(a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;

(b) aid to make good the damage caused by natural disasters or exceptional occurrences;

(c) aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, in so far as such aid is required in order to compensate for the economic disadvantages caused by that division. Five years after the entry into force of the Treaty of Lisbon, the Council, acting on a proposal from the Commission, may adopt a decision repealing this point.

3. The following may be considered to be compatible with the internal market:

(a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, and of the regions referred to in Article 349, in view of their structural, economic and social situation;

(b) aid to promote the accession of an important or disturbance in the economy of a Member State;

(c) aid to facilitate the development of certain areas not adversely affect trading conditions to an extent

(d) aid to promote culture and heritage conservation in the Union to an extent that is compatible

(e) such other categories of aid as may be specified

REGULATIONS

COUNCIL REGULATION (EU) 2015/1008

of 13 July 2015

on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of horizontal State aid conditions

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 107 thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Parliament (1),

Whereas

(1) Council Regulation (EC) No 994/98 (2) has been substantially amended (3) by the members of the Council and the Commission;

(2) Under the Treaty on the Functioning of the European Union (TFEU), the assessment of compatibility of aid with the internal market essentially rests with the Commission;

(3) The proper functioning of the internal market requires strict and efficient application of the rules of competition with regard to State aid;

(4) The Commission should be enabled to declare by means of regulations, in areas where the Commission has sufficient experience to define general compatibility criteria, that certain specified categories of aid are compatible with the internal market pursuant to one or more of the provisions of Article 107(2) and (3) TFEU and are exempt from the procedural provisions for an Article 107(1) TFEU aid;

(5) Such categories regulations require transparency and legal certainty. They can be directly applied by national courts, without prejudice to Article 4(3) of the Treaty on European Union and to Article 247 TFEU;

(6) State aid is an objective notion defined in Article 107(1) TFEU. The power of the Commission to adopt block exemptions is restricted to the aid to the agricultural sector in accordance with Article 107(2)(b) TFEU.

COMMISSION REGULATION (EU) of 17 June 2014

declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (Text with EEA relevance)

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Section 3 — Aid for access to finance for SMEs

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REVISION NEEDS AND AMBITIONS



REVISION NEEDS

- ▶ **Target and objectives alignment:** 2030/2050 climate & energy targets and goals
- ▶ **Alignment with the Clean Energy Package:** REDII, EE, Eldir
- ▶ **Climate commitments, climate laws & climate litigation**
- ▶ **Fundamental changes in the energy sector:**
 - Market fundamentals (production costs, electrification)
 - New actors & new activities
 - Products and services (storage, system adequacy, demand response, flexibility)
 - Type of support needed
 - Remaining market failures

Exhaustive list of specific aid measures in the Report
Underlying question: **scope of application** of the EEAG (coal phase-out, nuclear)
- ▶ **Recent case law of the CJUE:** intensity of the judicial review; procedural rules; implementation. Ex: Tempus Case T/793/14 (on appeal).

4

STRUCTURE OF THE EEAG FOR A COMBINED APPROACH



STRUCTURE OF THE REVISED EEAG

- ▶ **3 identified alternatives:** objective-based; specific measures; combined
- ▶ **For a «combined approach»:** common objectives & specific measures
- ▶ **Elements to be considered in the choice of the approach**
 - General architecture of EU SA law (Enabling Regulation, GBER);
 - Margin of appreciation left to the MSs;
 - Application of the proportionality test;
 - Flexibility in the dialogue between MSs and the Commission services;
 - Need for a level playing field between MSs;
 - Judicial review
- ▶ **Argues for clear assessment criteria**
- ▶ **And an updated definition of the objectives of common interest.** Ex: security of supply, generation adequacy

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GUIDING PRINCIPLES FOR THE REVISED EEAG



GUIDING PRINCIPLES

1 **Reminder: common assessment principles**

2 **Technology neutrality**

Ex: support to renewables, particularly for electricity production

3 **Eligible costs**

Ex: energy infrastructures

4 **Stability of the schemes: long-term visibility**

Cf. recent case law, alignment on REDII

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TO SUM UP



RECOMMENDATIONS

- ▶ **Keep alignment with 2030 climate & energy targets and 2050 goals**
- ▶ **Methodology**
 - combined approach between common objectives and specific aid measures
 - clear assessment criteria, guiding principles, revision of the objectives of common interest
- ▶ **Revise material scope of application of the EEAG**
- ▶ **Pay attention to enforcement and judicial review**

BEYOND THE REPORT

▶ **Duty of consistency**

- Many parallel legislative and regulatory processes, with high level of details: “regulatory tsunami”
- Ensure “smart regulation” and comply with duty of consistency (Art. 7 TFEU Art. 13(1) TEU), notably across financing mechanisms

▶ **EEAG part of the green economic recovery post-COVID-19**

- Green or ecological requirements: Competence to set them? Need for a common frame?
- Resilience as assessment criterion
- Industrial policy: How far can the EEAG go in supporting the recovery of the European economy? Which safeguards are necessary?

DISCUSSION



A CERRE REPORT AUTHORED BY



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