To: Margrethe Vestager, Executive Vice-President, Commissioner for Competition

Cc: Frans Timmermans, Executive Vice-President, European Green Deal
Cc: Virginijus Sinkevičius, Commissioner for Environment, Oceans, and Fisheries

RE: State aid CEEAG revision - NGO letter on fossil fuels

Brussels, 7 October 2021

Dear Vice President Vestager,
Dear Vice President Timmermans,
Dear Commissioner Sinkevičius,

We, the undersigned climate, environmental and health organisations, are writing with regards to the draft Climate, Energy and Environment State Aid Guidelines (CEEAG) that were published on the 7th of June. We call on the European Commission to live up to their promise of aligning competition policy[i] with the European Green Deal in this CEEAG revision.

A new State aid regime is fundamental in complementing the 'FitFor55' package in order to achieve and even overshoot current EU climate and zero-pollution targets and help fulfil the commitment under the Paris Agreement to limit global temperature rise to 1.5°C. The **CEEAG can be a powerful tool to incentivise energy efficiency, flexibility and a rapid deployment of renewables based on the 'energy efficiency first principle[ii]' - as a horizontal guiding principle of European climate, environmental and energy governance.** The Guidelines must also pave the way for rapidly ending fossil fuels subsidies and investments, and for enforcing the polluter pays principle by ensuring proper internalisation of the environment, climate and health costs.

We would like to bring your attention to a number of key points further elaborated below, which we think are essential to improve the CEEAG proposal. These relate to gaps in the newly introduced provisions for coal closures, and the risk of increased fossil gas support, following the closures of 'the most polluting' fuel infrastructures, as they are called in the CEEAG proposal.

Setting a Paris-aligned timeline for coal closures

The CEEAG include for the first time a section on aid for the early closure of profitable coal, peat and oil shale plants and mines when a Member State decides to prohibit power generation from these sources at a certain date. However, they fail to define what is meant by 'early closure' and 'profitable'.

There is no latest date specified for aid to be provided for coal plant closures. This allows the possibility for aid measures to serve as a lifeline for coal-fired electricity producers and support the continued operation of their stranded coal facilities until their closure at an unjustifiably late date. A Paris-climate-agreement-compatible plan for coal means a phase-out by 2030, at the very latest, in all Member States[iii]. The Commission's own impact assessment for delivering the EU 2030 climate target expects coal-based power production to end by 2030[iv]. It is clear that in order to be in line with the Union's binding climate targets for 2030 and 2050, if state aid for profitable coal plants is foreseen, then it should only apply for the full and definitive closure by 2030 at the latest, of all coal/oil shale/peat operations[v] identified as profitable, accompanied by a closure plan drawn by independent experts.

Being realistic about the profitability of the EU's coal fleet

The draft guidelines do not explain how the profitability of the plants demanding 'early closure' compensation for their foregone profits will be assessed. Regardless of whether a government has announced a coal phase-out date or not, many of the coal plants in Europe are already unprofitable[vi]. Defining types of foregone profits and costs, and requiring an independent and transparent evaluation of claimed profitability by experts, will help assess this. Such an approach will allow the Commission to rely on unbiased information instead of the Member States' and operators' own data and calculations and help avoid fossil fuel subsidies[vii]. An asset valuation methodology should be the same for all Member States and must indicate a clear list of what can be included in foregone profit claims.

Accounting for the huge environmental and health cost of coal burning

An adequate asset valuation methodology should include the assessment/internalisation of the externalities, meaning the negative impacts on the environment and health, the society has to pay throughout the lifetime of an activity. The International Monetary Fund (IMF) defines such externalities as 'implicit subsidies' since recently, and acknowledges that these have driven 92 percent of total global fossil fuel subsidies, causing the mispricing of fuels[viii].

As a matter of fact, European coal plant and mine operators are advantaged on the market by not paying for the huge burden of pollution and resource-use they are responsible for. Many of the coal operators, who are now trying to leave their (uneconomic) coal assets behind, have not been implementing the strictest air pollution limits in their plants under the Industrial Emissions Directive[ix], and many of the lignite mine operators are exempt from fees to extract groundwater - avoiding the cost recovery principle[x]. The draft CEEAG acknowledge[xi] that aid for environmental measures is demanded in many cases due to a lack of incentive to internalise negative externalities. Yet, they do not require operators to address their external costs properly, as a precondition to access aid for closures. Such a precondition which should foresee reaching the highest environmental protection levels through the rigorous and full application of Union standards[xii], could increase coal plant and mine operators' accountability for the environmental and health burden they cause. It would also give a very concrete signal about the Commission's intention to align competition policy with the European Green Deal. We also believe that the requirement for Member States to adapt their aid measures to the new CEEAG by the end of 2023 should be interpreted as a requirement to put an end to those measures that support activities that breach their environmental law obligations or which are not operated in accordance with relevant Union Standards.

Overall, the CEEAG should oblige Member States to use regulatory avenues[xiii] to drive an even earlier and more cost-effective coal plant closure, while enforcing the polluter-pays principle and pollution prevention in the first place, before granting closure compensation.

Preventing a fossil gas lock-in

The draft CEEAG classifies coal/lignite, peat, oil shale/oil and diesel as examples of the most polluting fossil fuels. However, throughout the proposal, fossil gas is being treated more favourably than those 'most/more polluting fossil fuels'.

There is no sound scientific justification nor legal basis for this preferential treatment. There is increasing evidence of high methane leakage[xiv] rates across the full gas supply chain. The recent IPCC report confirms that methane levels in the atmosphere[xv] are much higher than expected.

Moreover, Europe's gas infrastructure network has been repeatedly qualified as oversized, going well-beyond the minimum requirements for security of supply[xvi]. Subsidising additional fossil gas infrastructure through state aid would be in stark contradiction to the European Commission's impact assessment on the EU's 2030 increased climate target, suggesting that fossil gas use needs to be reduced by more than a third.

It should also be very clearly recognised that the fuel switch from coal to gas in most affected regions will not secure a just transition for the workers[xvii].

To be in line with limiting global temperature increase to 1.5°C, any state aid needs to incentivise a rapid end[xviii] for fossil gas use, and support renewable energy and energy efficiency solutions that will lead to a significantly reduced energy demand and a fully renewable energy system

Showing climate leadership

Globally, momentum is building to develop new financial instruments to help countries retire their coal fleets as COP26 in Glasgow approaches[xix]. Securing early retirement of fossil fuel/peat power generation is critical to meeting the Paris Agreement's climate objectives, but the closure instruments and conditions have to be clear and strict to prevent overpayment, incentives to keep unprofitable plants operate for longer, and a lock-in to fossil gas. The EU has an opportunity to show leadership when deciding how to focus public resources to speed up the energy transition towards renewable sources and energy efficiency under its new CEEAG. Given the EGD goal of climate neutrality and all ensuing commitments, the bar needs to be set as high as possible.

As the world is watching, the EU should not miss the opportunity to set the state aid conditions in a way that will help the whole world transition away from all fossil fuels as soon as possible.

Yours sincerely,

Wendel Trio, Director, Climate Action Network (CAN) Europe

On behalf of:

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Sources:

CAN Europe response to public consultation on the revised CEEAG: https://caneurope.org/content/uploads/2021/08/CAN-Europe-response-to-State-Aid-CEEAG-revision-public-consultation_20210802.pdf

ClientEarth reponse to public consultation on the revised CEEAG: https://www.clientearth.org/latest/documents/clientearth-reply-to-ceeag-consultation/

EEB response to public consultation on the revised CEEAG: https://eeb.org/library/eeb-comment-on-the-guidelines-on-state-aid-for-climate-environmental-protection-and-energy-ceeag/

HEAL response to public consultation on the revised CEEAG: https://www.env-health.org/wp-content/uploads/2021/08/210802-HEAL-letter-comments-on-draft-CEEAG.pdf

Notes:

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[i] European Commission policy brief Competition Policy in Support of Europe's Green Ambition: https://op.europa.eu/en/publication-detail/-/publication/63c4944f-1698-11ec-b4fe-01aa75ed71a1/language-en/format-PDF

[ii] The Energy Efficiency First Guidelines, published by the European Commission on 28 September refers the Governance Regulation to define the Energy Efficiency First principle and points at reflecting Energy Efficiency First principle in State Aid Guidelines - which was not the case in the draft published in June: https://ec.europa.eu/energy/sites/default/files/eef_guidelines_ref_tbc.pdf

[iii] https://climateanalytics.org/media/report_coal_phase_out_2019.pdf

[iv] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020SC0176

[v] The power plants, and their associated mining and processing operations.

[vi] https://ember-climate.org/project/coal-collapse/

[vii] The German lignite closures state aid case (State Aid SA.53625 (2020/N) showcases this issue. The profitability assumptions made by Germany are unrealistic (e.g. concerning CO2 price and expected lifetime of coal installations), as also noted by the Commission: https://ec.europa.eu/commission/presscorner/detail/en/ip_21_972

[viii] https://www.imf.org/en/Publications/WP/Issues/2021/09/23/Still-Not-Getting-Energy-Prices-Right-A-Global-and-Country-Update-of-Fossil-Fuel-Subsidies-466004

[ix] The most advanced pollution control measures (BAT) adopted under the Industrial Emissions Directive have been considered economically viable by the industry through the Sevilla process. See shortcomings in Member State implementation, particularly relevant for lignite combustion: https://eeb.org/four-years-of-unnecessary-pollution-eu-governments-fail-to-curb-emissions-from-most-toxic-plants/

[x] https://eeb.org/library/mind-the-gap-report/

[xi] Paragraph 33.a in the draft CEEAG Communication: https://ec.europa.eu/competition-policy/system/files/2021-06/CEEAG_Draft_communication_EN.pdf

[xii] This precondition can support a sufficient enforcement of EU Environmental protection acquis by the European Commission, stricter BAT associated emission levels - including energy efficiency- set under the EU Best Available Techniques Reference Documents adopted under the Industrial Emissions Directive, and strict compliance with environmental quality standards such as the Water Framework Directive.

[xiii] For example, minimal carbon floor price, minimal binding boiler efficiencies, strong air pollution prevention measures etc.

[xiv] https://www.edf.org/climate/methane-studies

[xv] https://www.globalcarbonproject.org/methanebudget/

[xvi] https://www.artelys.com/wp-content/uploads/2020/01/Artelys-GasSecurityOfSupply-UpdatedAnalysis.pdf

[xvii] https://spectrum.ieee.org/automation-is-engineering-the-jobs-out-of-power-plants

[xviii] https://caneurope.org/content/uploads/2020/01/2020-CAN-gas-PP.pdf

[xix] Various international finance institutions and development banks are currently developing programmes to support coal closures. Moreover, at the annual UN General Assembly in September, the US vowed to double aid for climate finance, and China pledged to stop funding overseas coal projects - significantly reducing the global amount of funds available for them.