European Commission

Energy infrastructure

Analytical grids 2017

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Definition — energy infrastructure

Guidelines EEAG 2014, paragraph 31 — and Art. 2(130) GBER

The energy infrastructure shall include:

a) **electricity:** infrastructure for transmission, distribution and storage (connected to HV transmission);

b) **gas:** transmission and distribution pipelines for the transport of gas, underground storage facilities connected to the gas pipelines, reception, storage and regasification or decompression facilities for liquefied natural gas (´LNG´) or compressed natural gas (‘CNG’);

c) **oil:** pipelines, pumping stations and storage facilities;

d) **CO2:** network of pipelines for the transport of CO^2 to storage sites.

For the purpose of the analytical grids, energy production units and the construction and operation of district heating and cooling are excluded from "energy infrastructures"

General principle of the NoA - energy

1. Energy infrastructure is used for the provision of energy services against payment. It constitutes an **economic activity**.
2. For both Electricity and Gas, a series of activities relating to the creation/operation /upgrade of transmission and distribution networks are typically reserved to Transmission system operators (TSOs) and Distribution System Operators (DSOs).
3. Certain energy infrastructure is, to a large extent, built by market actors, which is evidence of significant market financing, and financed through user tariffs. E.g. Oil infrastructures, Electricity and gas storage, electricity interconnectors, LNG plants.

Existence of State aid is excluded - 1

1. When, in certain Member States the construction and operation of certain infrastructure in the field of energy and gas (transmission and distribution networks/pipelines) is **legally exclusively reserved** for the Transmission System Operators (TSO) or the Distribution System Operators (DSO)
2. Financing this infrastructure is not subject to State aid rules if the cumulative conditions for **legal monopoly** in §188 NoA are met:

   A. Construction and operation of infrastructure is subject to a legal monopoly established in compliance with EU Law,

   B. Excluding not only of competition *in* the market, but also *for* the market,

   C. the service is not in competition with other services,

   D. and cross-subsidisation has to be excluded if the operator of the energy infrastructure is active in another geographical and product market (unbundling rules in IM legislation)

Existence of State aid is excluded - 2

In Member States where the TSO/DSOs do not enjoy a legal monopoly, for comprehensive networks of electricity or gas infrastructure an effect on trade or distortion of competition may be excluded in case of **natural monopoly** if:

i. the infrastructure typically faces no direct competition, that is where the TSO/DSO networks cannot be replicated for economic reasons;

ii. alternative financing in the network infrastructure in addition to the TSO/DSO financing is insignificant in sector and Member State concerned;

iii. it is not "dedicated", i.e. not designed to selectively favour a specific undertaking or sector, but benefits society at large.

iv. funding provided for the construction of the electricity and gas network infrastructure cannot be used to cross-or indirectly subsidise other economic activities, including the operation of the infrastructure (see unbundling in IM legislation)

§211 §212 of NoA

Infrastructures where State aid cannot be excluded (E&G)

1. For electricity, this is typically the case of interconnectors, which attract market investments and whose financing is normally based on user charges.

2. This is also the case of electricity storage. For storage relating to RES plants, other rules apply.

3. For gas, this is the case of gas storage and LNG plants, which normally attract market investments and charge users tariffs. SA rules continue to apply to such cases.

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Compatible State aid — energy

Compatible and exempt from notification requirements, if

1. **Article 48 GBER for ‘energy infrastructure’**

   Applies only to infrastructure defined in Article 2 (130)

   a) Only for infrastructure in regions “assisted”
   b) Eligible all investment costs minus operating profit (calculated ex ante or ex post with recovery claw-back mechanism) ("funding gap approach")
   c) Max EUR 50 million per undertaking per project
   d) Comply with tariff regulation and third party access
   e) investments for **(E&G) storage** and for **oil infrastructure** are excluded

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State aid to be notified — energy

- **Guidelines on State aid for environmental protection and energy 2014-2020 ('EEAG'):**
  - See section 3.8 of the EEAG

More Information

For info or further questions on this seminar and the activities of the JASPERS Networking Platform, please contact the JASPERS Networking and Competence Centre at the following email:

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