

FAQ ON EX ANTE CONDITIONALITIES RELATING TO ENERGY ISSUES

This list of frequently asked questions is based on comments received from Member States (MS) on Part II of the Guidance on ex ante conditionalities relating to energy issues (EAC 4.1, 4.2, 7.4).

EAC 4.1 Energy efficiency

- Comments relating to the criterion requesting "*Measures to ensure strategic planning on energy efficiency, consistent with Art. 3 of Directive 2012/27/EU*"

"Art.3 of Directive 2012/27/EU doesn't contain any requirements regarding strategic planning. This Article requires MS to set an indicative national energy efficiency target. The criterion should be reformulated."

Commission's reply: The fulfilment of ex ante conditionalities will be checked against the criteria for fulfilment mentioned in Annex XI Part I of the CPR. Therefore, Member States should demonstrate that they have taken measures to ensure strategic planning on energy efficiency consistent with the national target mentioned in Article 3 of Directive 2012/27/EU. Indeed, the lack of strategic approach to meet this target could undermine the efficiency of EU funding in this sector. In order to check the fulfilment of this criterion, the Commission will verify whether Member States have set their national indicative energy efficiency target.

EAC 4.2 Cogeneration

- "Request for the deletion of the entire sub-criterion relating to the following criterion for fulfilment *"Member States or their competent bodies have evaluated the existing legislative and regulatory framework with regard to authorisation procedures or other procedures in order to a) encourage the design of co-generation units to match economically justifiable demands for useful heat output and avoid production of more heat than useful heat"*.

Rationale: Transposition period for this measure is June 2014, which is not in compliance with art. 19(2) of the Regulation 1303/2013."

Commission's reply: Drafting of the criteria for fulfilment relating to EAC 4.2 on Cogeneration is similar to the requirements set by Art. 9.1 of Directive 2004/8/EC on the promotion of cogeneration based on a useful heat demand in the internal energy market, that was supposed to be transposed by 21 February 2006.

Therefore, Member States need to demonstrate that they have taken appropriate measures to ensure that the legislative and regulatory framework applying to authorisation procedures would *encourage the design of co-generation units to match economically justifiable demands for useful heat output and avoid production of more heat than useful heat*.

This means in other words that authorisation procedures for individual installations should include criteria to take account the results of cost-benefit analyses for the application of high-efficiency cogeneration. Such a process would indeed guaranty that the design of new cogeneration units meets the market needs for energy.

EAC 7.4 Development of smart energy distribution, storage and transmission systems

- "Need for additional guidance on how to fulfil the following requirement: *Comprehensive plans describing the national energy infrastructure priorities are (...) compatible with Article 3(4) of the Regulation(EU) no 347/2013of European Parliament and of the Council*"

"Article 3.4 of the Regulation No 347/2013 provides the empowerment to the EC to adopt delegated acts which will establish the Union list of projects of common interest in the field of energy. Moreover EC shall ensure that the Union list is established every two years. Please explain how to fulfill this criterion at MS level and how MS should ensure compatibility with Article 3.4 of the Regulation No 347/2013 which is dedicated to CEF and not to ESI funds?"

Commission's reply: In order to fulfil the requirement set in the above-mentioned criterion for fulfilment, Member States need to demonstrate that their comprehensive plans describing their national energy infrastructures are compatible with the Union list of projects of common interest that was adopted by the Commission on 14 October 2013.

http://ec.europa.eu/energy/infrastructure/pci/doc/com_2013_6766_en.pdf

The rationale of this criterion is to ensure that ERDF funding would share the same objectives as the trans-European energy networks (TEN-E), in effectively supporting the functioning of the internal energy market and security of supply in the Union, and promoting the interconnection of energy networks. That is why projects of common interest shall be conferred the highest possible priority in the identification of national energy infrastructure priorities among the priorities mentioned in the energy planning documents.

In case where national comprehensive plans would not take account of this list of projects at the time of programme' adoption, Member State shall indicate in their PA and programmes the actions to be taken, the responsible bodies and a timetable for their implementation to ensure that this would be done at the latest by the end of 2016.

- "The definition of smart gas infrastructure is not acceptable."

"We propose the following definition: *"Gas grids and storage with integrated IT technologies that integrate the activities of participants of the gas market in the processes of transmission, distribution, storage and use of gas. Smart grids and storage would allow to improve the reliability of natural gas supply, provide continuous, secure and cost-effective access to gas, as well as to create the technical capabilities to offer customers new services that optimize use of gas and improve the effectiveness of services provided at the moment."*

Commission's reply: The definition of smart gas infrastructure, which is mentioned in the guidance, reflects the outcome of the negotiations between the co-legislators during the ERDF trilogues. Indeed, the EP has accepted the inclusion of "energy distribution, storage and transmission systems" as part of ERDF investment priorities (Art. 5(7)(e) of the ERDF Regulation) on the basis reaffirmed by the Council and the Commission that it would refer to "smart gas" and not only to "gas" (as foreseen in the alternative definition suggested above).

To be "smart", gas infrastructure potentially eligible for ERDF co-financing should therefore be compatible with the Union's energy policy objectives of competitiveness, sustainability and security of supply.

The assessment of *ex ante* conditionality 7.4 relating to the development of smart energy distribution, storage and transmission systems should therefore take account of the definition of "smart gas infrastructure" that was shared with the EP and the Council during the negotiations on the ERDF Regulation.

As a consequence, "smart gas infrastructure" has at least one of the following characteristics:

- It supports integration of generation from non-conventional sources (such as renewable energy sources (RES) based on synthetic methane and biomethane) in the gas grids, transport and storage of such gas;
- It allows the integration of gas power plants in the electrical grids as needed for compensating the peak loads in order to allow further integration of RES (and thus increasing the overall share of RES in the system).
- It enhances the flexibility of the gas networks in particular through the use of IT technologies to support demand and supply challenges and offers customers new services and improved effectiveness while reducing overall climate and environmental impact compared with existing situation. It therefore promotes a win-win scenario from a climate perspective.

- "The definition and detailed expectations regarding the *mature and realistic project pipeline* should be reconsidered."

Commission's reply: The Commission has clarified and adjusted its expectations towards the *mature and realistic project pipeline* in the last version of the Guidance.

The concept of "realistic and mature project pipeline" has to be understood in the context of the whole project cycle starting from planning until the implementation. It means a list of projects covering at least the three first years of the programming period, i.e. the indicative list of projects for which the works are expected to start during the first three years, for which:

- A feasibility study (including options analysis and preliminary design) has been concluded;
- There is a positive socio-economic Cost Benefit Analysis (including detailed estimated costs) demonstrating financial viability of the project and the need for public financial contributions;
- EIA (environmental impact assessment) and other assessments (e.g. under Habitats and Water Framework Directives) are ideally finished or at least sufficiently advanced (i.e. consultations with the public and other authorities finished) and a development consent is expected without outstanding environmental issues;
- Identification of potential state aid in the project;
- There is a detailed implementation timetable, detailing procurement procedures (call for tenders can be expected to be completed in accordance to the timetable) and permission procedures (these should be ready to start).

For successive years, the comprehensive plan should contain an indicative list of projects and should guarantee that processes are duly in place to address state aid issues, environmental requirements, feasibility studies and socio-economic CBA in a timely manner (e.g. manual of procedures, identified planning units, etc.).