

ESA

EFTA
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State aid news in times of energy and climate transformation

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Agenda:

I ESA priorities and workload

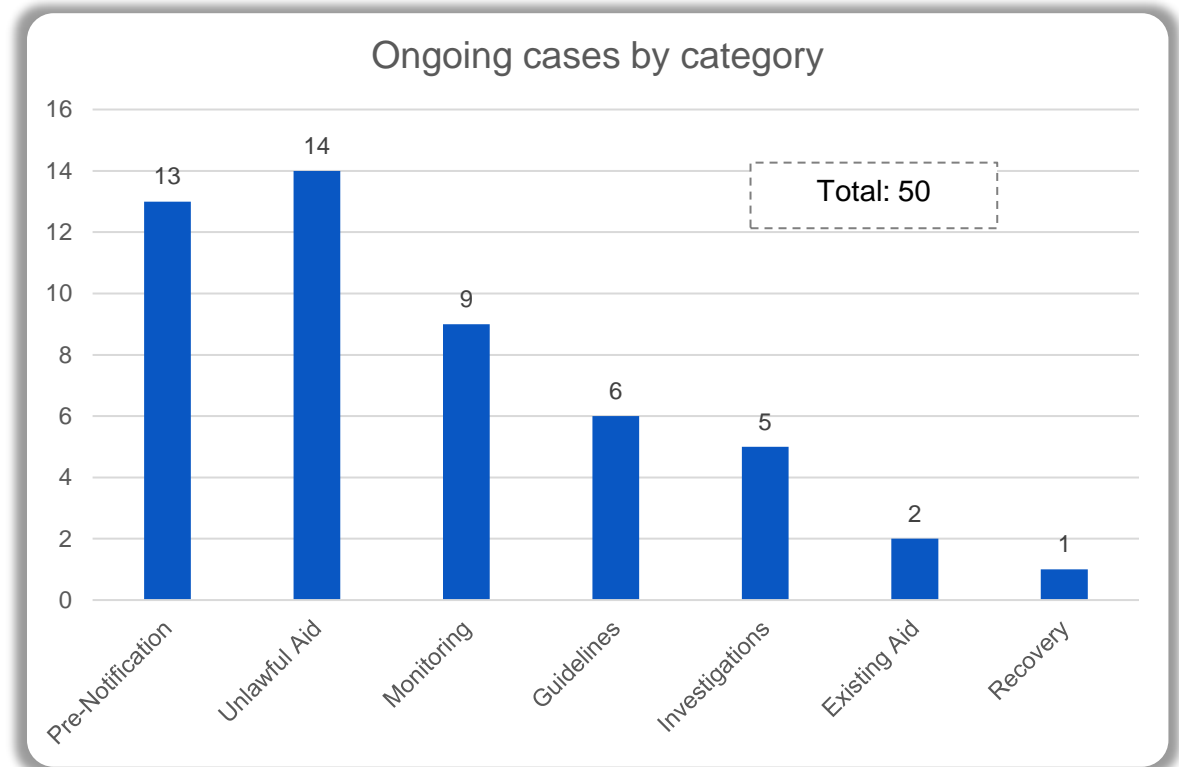
II ESA Guidelines on State aid for climate, environmental protection and energy 2022

III The General Block Exemption Regulation: the 2023 Green Deal amendment

IV Temporary Crisis and Transition Framework

I ESA priorities and workload

- **ESA 2023 priorities:**
 - Important (pre)notifications (crisis & green)
 - Formal investigations
 - Monitoring
 - Complaints (+backlog)



College

Internal Market
General

Competition & State aid
State aid team

Legal

ENFIP
(*Environment, Energy,
Financial Services and
Public Procurement*)

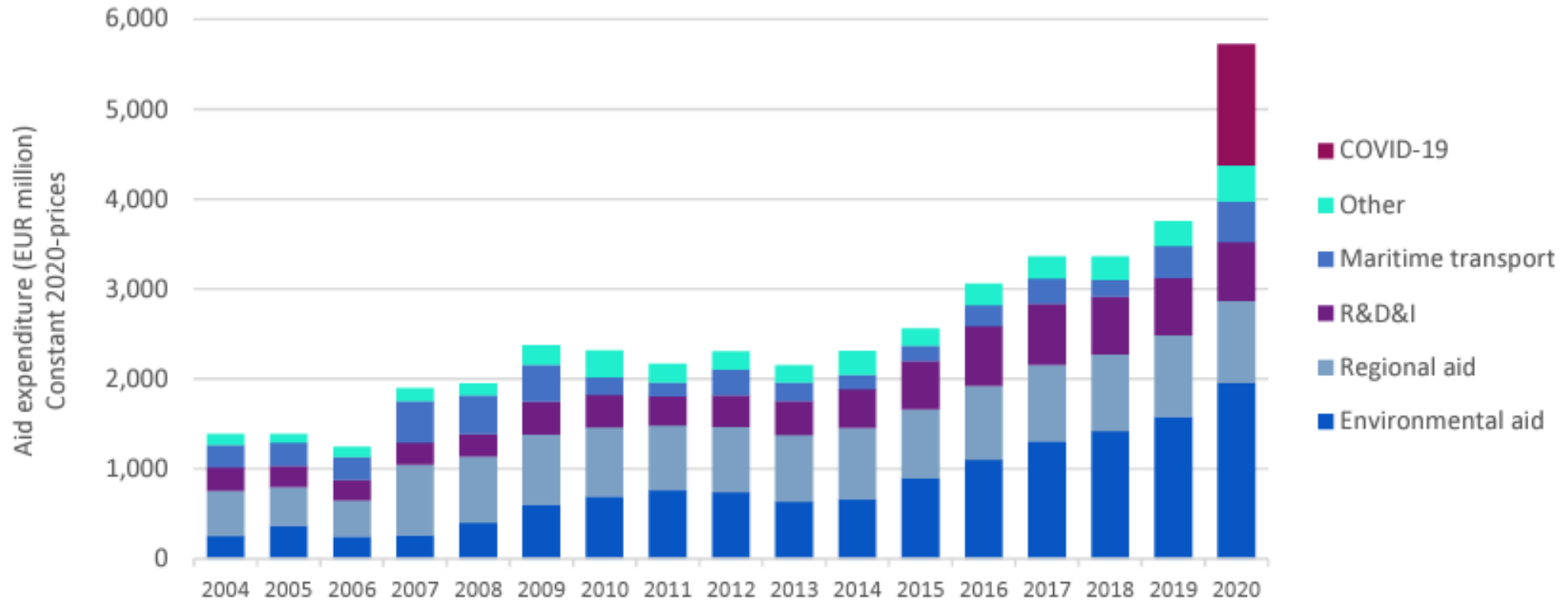
Chief Economist team

Transport

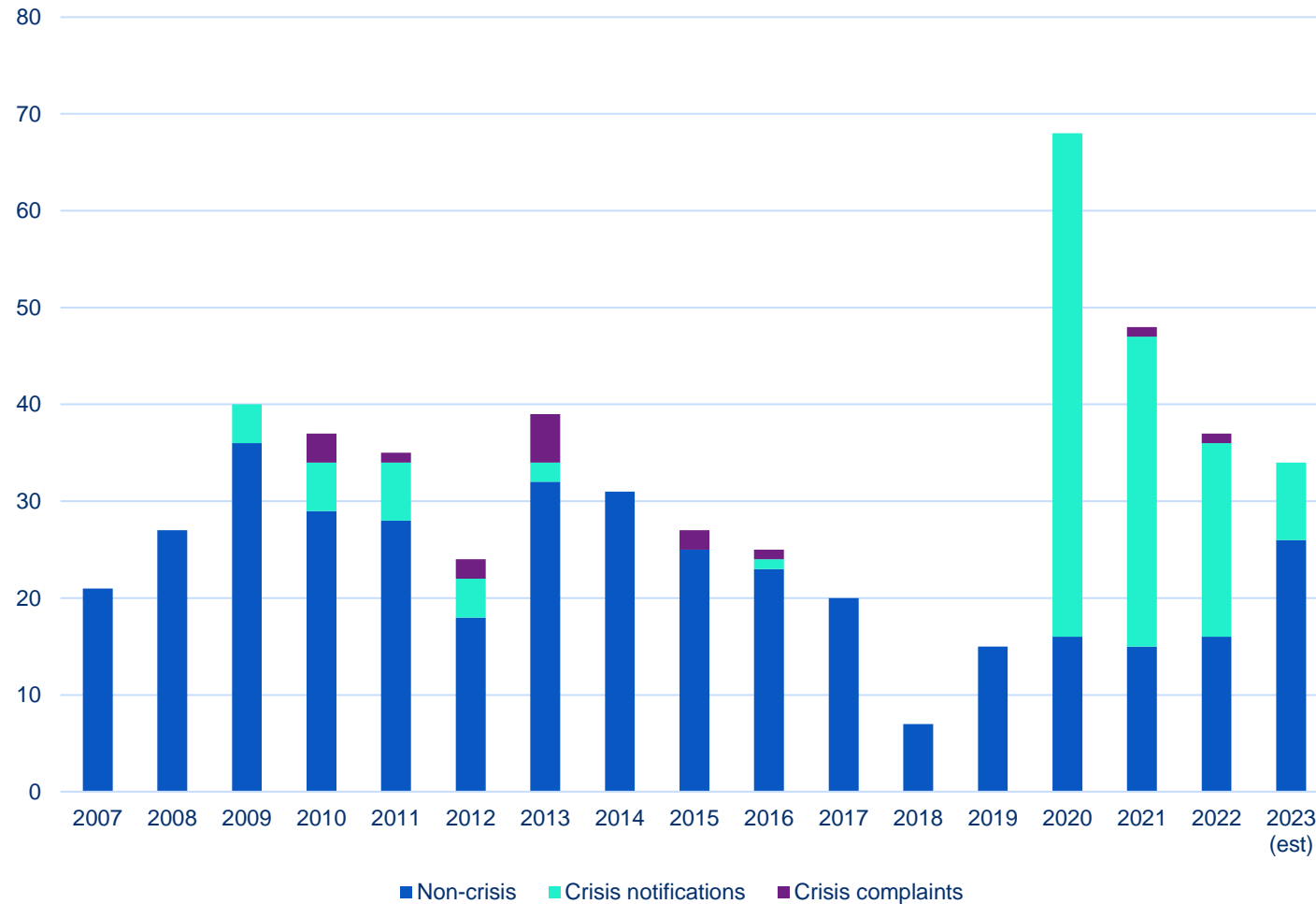
See ESA's organisational [chart](#)

ESA State Aid Scoreboard 2021

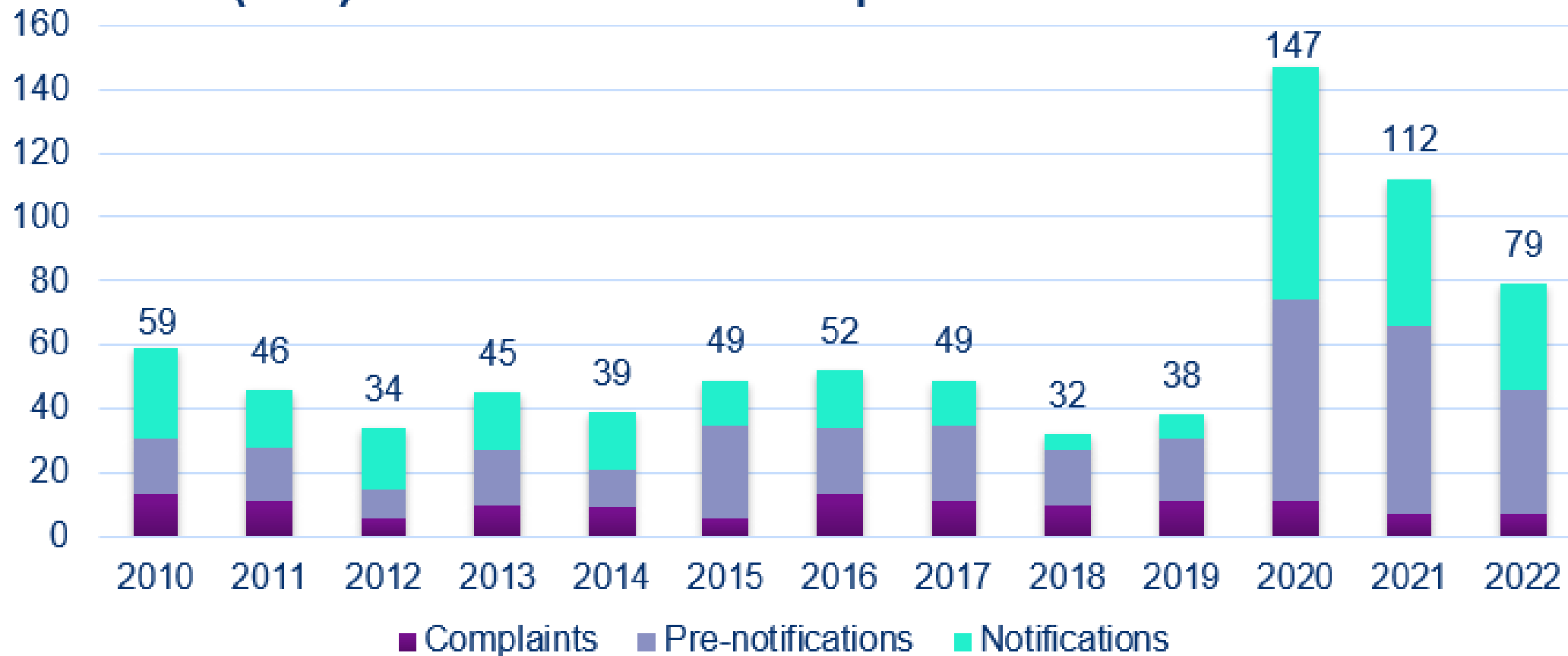
Figure 4: Total aid expenditure by main objective in Norway during 2004–2020¹⁸



Decisions 2007-2023



(Pre-) Notifications and complaints received 2010-2022



II ESA Guidelines on State aid for climate, environmental protection and energy 2022 (CEEAG)

Background

- State aid rules aligned with COM policies (Green Deal, Fit-for-55)
- Rules allowing for streamlined compatibility assessment of large-scale measures
- Renewables and industrial decarbonisation

ESA CEEAG adoption and adaptations: the “new” approach

- The “old” approach

ESA adoption decision and guidelines text adapted by ESA

E.g., ESA decision 301/14/COL and [ESA's EEAG 2014-2020](#)

- In December 2021, the “new approach”

- ESA adoption decision, including the necessary adaptations *in that decision only*
- Publication of ESA decision and Guidelines *as adopted by COM*

The “new approach” examples:

ESA Decisions No 280/21/COL (IPCEI Communication); 293/21/COL (STEC Communication); and 292/21/COL (Risk Finance Guidelines)

CEEAG adoption by ESA & main adaptations

- The CEEAG adoption by ESA

ESA Decision No [029/22/COL](#) of 9 February 2022 adopting [the CEEAG](#) and its [Annexes](#)

- EU law and policy references in the CEEAG, Decision preamble

“The 2022 Guidelines may refer to certain European Union policy instruments and to certain European Union legal acts that have not been incorporated into the EEA Agreement. With a view to ensuring uniform application of State aid provisions and equal conditions of competition throughout the EEA, ESA will generally apply the same points of reference as the Commission when assessing the compatibility of aid with the functioning of the EEA Agreement”

- The EEA Agreement scope, Decision article 2(l)

”if the Guidelines set out that they will be applied to ‘all sectors of economic activity’, ESA applies them to ‘all sectors of economic activity or parts of sectors of economic activity falling within the scope of the EEA Agreement’ ”

The CEEAG: some reflections on practical implications

- **More internal coordination at ESA**

- Art 61(3)(c) compatibility assessment: not just state aid rules

The Hinkley Point C judgment from 22 September 2020

E.g., Case 85245 Tax incentives in favor of emission friendly vehicles, para 113:

“ESA has no indications that the measures, the conditions attached to them or the activities they finance, are incompatible with relevant EEA law”

- CEEAG, point 33:

“If the supported activity, or the aid measure or the conditions attached to it, including its financing method when it forms an integral part of the measure, entail a violation of relevant Union law, the aid cannot be declared compatible with the internal market”

- EEA relevance of EU legislation references in the CEEAG? Part of the EEA legal order?

■ **More flexible max aid rules**

The EEAG & individually notifiable aid

- Counterfactual analysis based on profitability in the absence of aid (NPV, IRR)

Net Extra Costs or (full) **Funding Gap** estimate in the absence of counterfactual

- Investment aid intensities (EEAG Annex 1)

Eg RES energy, large enterprises: 45% (100% if competitive bidding)

The CEEAG:

- More flexibility for reduction and removal of GHG emissions, incl RES energy
- Up to 100% of the **NEC**; (full) **FG** (if no counterfactual)
- **NEC/FG** detailed assessment not required if competitive bidding process

Nb! More focus on competitive bidding process, and exemptions from it

■ Less cases?

Individual notification thresholds for individual aid under aid schemes

The EEAG and current GBER examples:

RES investment aid: aid amount exceeds MEUR 15 million for one undertaking

energy infrastructure investment aid: aid amount exceeds MEUR 50 for one undertaking, per investment project

2023 GBER amendment: MEUR 30 million investment aid for environmental protection, per undertaking per investment project

The CEEAG:

No individual notification threshold for aid under approved schemes

Nb! if no *competitive bidding process*, individual notification requirement is a factor in the balancing test for projects of *certain size or characteristics*;

Obligations as of 1 July 2023

- Public consultation prior to notification / competition impacts and proportionality
 - The extent depending on estimated avg annual budget (150 MEUR)
 - Exemption for below 50 MEUR: competitive bidding and used and not for investments in fossil-fuel based energy generation, production or other activities.
- Estimation of subsidy per tonne of CO₂ equivalent emissions avoided

III The General Block Exemption Regulation: the 2023 Green Deal amendment

Background

- The GBER: specific categories of State aid declared compatible, exemption from notification and COM/ESA approval.
- The 2023 amendment: targeted changes to facilitate, simplify and speed up support for the EU's green and digital transitions
- Alignment following the 2012 State aid modernisation package fitness check

E.g., CEEAG, Regional Aid Guidelines, the RDI Framework

State of play with the adoption and EEA EFTA States applicability

- EN draft *endorsed* by COM on 9 March 2023, not yet adopted
- EEA EFTA applicability: incorporation in the EEA agreement
Cf Draft COM CEEAG *endorsement* prior to the adoption
- GBER prolongation until 31 December 2026

Some practical considerations regarding energy/climate

- Less notifications?

MEUR 30 million investment aid for environmental protection

- Art 36 / Decarbonisation measures

- Various eligible costs/max aid assessment methods

Counterfactuals based extra investment costs; competitive bidding; full FG+ clawback; directly linked investment costs (aid % reduction by 50%)

- CCS special rules

- Art 41 / RES investments

- H2 included if renewable

- Aid amount: total investment costs (30-45%) or competitive bidding

IV Temporary Crisis and Transition Framework

General remarks

- TCTF adoption: 9 March 2023 by COM

Expansion/prolongation of the 23 March 2022 COM Temporary Crisis Framework

- ESA approach: application by analogy
- Competitiveness of Europe's net-zero industry and support the fast transition to climate neutrality, in line with the Green Deal Industrial Plan
- Applicable until 31 December 2025, possible to apply for projects where works started before 9 March 2023 (acceleration, widened scope)

Main features

- Section 2.5: accelerated RES and storage rollout
- Scheme based measures, specific form of aid for investments

Op aid: two-way CfD

- Aid amount: total costs or competitive bidding (45-100%)
 - For certain sectors (eg on and offshore wind): competitive bidding mandatory (with exceptions)
-
- Section 2.6: investments for industrial decarbonisation
 - Scheme based, limits on max individual aid amounts, specific form of aid
 - GHG reduction targets
 - Production capacity increased not allowed (technical necessity exception)
 - Eligible costs options: investment costs vs revenues/savings; competitive bidding, or aid %
- Specific rules for H2 and H2-based fuels

- Section 2.8: accelerated investments in sectors strategic for the transition towards a net-zero economy

- The risk of relocation outside the EEA

“concrete risks of the productive investment not taking place within the EEA and that there is no risk of relocation within the EEA”

- Manufacturing support based on aid scheme: solar panels, wind turbines, heat-pumps, electrolysers, and CCS (equipment, key components, critical raw materials)

- Aid amount: investment costs, % depending on region, form of aid and company size

- TCTF point 86: individual aid up to the amount of subsidy, which the beneficiary could demonstrably receive for an equivalent investment in a third country jurisdiction outside the EEA

- TCTF section 2.8, point 86: matching aid
- individual aid up to the amount of subsidy, which the beneficiary could demonstrably receive for an equivalent investment in a third country jurisdiction outside the EEA
- Relevant for assisted areas (regional aid maps)
- “solid evidence of subsidies it would credibly receive in a non-EEA jurisdiction for a similar project and must demonstrate that without the aid the planned investment would not take place in the EEA”
- Max aid: NPV difference between the aided and the counterfactual investment “in a non-EEA jurisdiction which the aid beneficiary would credibly carry out in the absence of aid in the EEA” (and the amount of capex)

Thank you!

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