

DRAFT GUIDELINES ON ENVIRONMENTAL AND ENERGY AID FOR 2014-2020 COMMENTS

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CONTEXT

In the context of state aid modernization, the European Commission aims at streamlining rules and facilitating faster decisions by revising, among other things, the Community guidelines on State Aid for environmental protection (2008/C 82/01).

This process is an opportunity to provide additional clarity on the legal framework of support mechanisms for renewable energy sources (RES). The current version of the Guidelines has proven a very successful tool to speed up the notification and authorization procedures of those RES support mechanisms which are designed as state aid and thus fall under the scope of Article 107(1) of the Treaty on the Functioning of the European Union (TFEU).

The aim of the Guidelines is to increase legal certainty and the transparency of the decision-making process of the European Commission. At the same time, they should continue to minimize distortions in the internal energy market, bearing in mind that a stable framework for renewable energy development is needed. The “energy-only market” cannot provide sufficient incentives for the ongoing energy transition.

However, the current draft falls short of maintaining this positive course: The Guidelines address, among others, the design of RES support mechanisms and the issue of subsidies for nuclear power.

The draft Guidelines establish that operating aid for renewable energy shall be granted only under strict conditions and via:

1. Feed-in premiums – These are to be allocated as part of a technology-neutral bidding process with a set budget. They would also have to be open to electricity generated in other Member States.
2. Tradable Green Certificates – They are also supposed to be technology-neutral. Furthermore, cap and floor prices are prohibited.
3. Feed-in tariffs – They would only be allowed for supporting demonstration projects and large scale projects at first commercial use. This would de facto lead to the termination of one of the most successful and effective policies in Europe and worldwide.

Seeing that the Directorate-General Energy has prepared specific guidance on support mechanisms – expected early September, and taking into consideration the subsidiarity principle, it is highly questionable whether the review of the Guidelines is the most appropriate vehicle to tackle these issues. Such matters need to be discussed and decided upon in close cooperation with stakeholders, Member States and all relevant Commission services.

RENEWABLE ENERGY SOURCES – KEY POINTS AND RECOMMENDATIONS

1. *Ignoring support system best practice and imposing a support mechanism that has not yet been tested could lead to a halt in renewable energy development.*

- Regardless of whether or not they are designed so as to fall under the state aid definition of the Guidelines, RES support mechanisms have played a significant role in the development of renewable energy in Europe. Especially feed-in policies, and in particular the German EEG, have been successful in terms of both effectiveness and cost-efficiency, as their adoption in more than 71 countries shows. The draft Guidelines propose, in disregard of national best practice, the adoption of a capped technology-neutral bidding system for allocating feed-in premiums. *By restricting the definition of what constitutes allowed state aid, the Commission threatens to interfere with the functioning of some effective and cost-efficient tools.* It thus endangers the further development of mature renewable energy technologies and risks bringing the development of emerging ones to a halt. *It is of utmost importance that the Commission continues to allow for a mix of support policies and does not override the rights of Member States as stated in Article 194(2) TFEU and the Renewable Energy Directive 2009/28/EC (RES Directive).*
- Not only technology-neutral tenders, but tenders in general have a number of disadvantages when it comes to supporting renewables. They favour large companies which have larger administrative capacities and budgets that allow them to submit economically more advantageous bids and provide the high upfront financial guarantees that are often required. Furthermore, tenders imply significant risks in regard to the timely development of renewables, since projects which bid too low might not be realized on time, if at all. It is also important to note that the combination of tenders with feed-in premiums can be even more detrimental to RES development, because all systems based on market prices – such as tradable certificate systems or premiums – increase the market risks and thus the financing costs, especially for small and medium companies. *In countries like Germany, where private investors and small and medium enterprises own more than 50% of renewable energy capacities, the introduction of such a mechanism would abruptly stop the development of renewable energy and throw the Energiewende off course.*
- Feed-in tariffs, in particular, have been essential in increasing the share of renewable energy in many Member States. *The German Renewable Energy Sources Act (EEG), for example, with its technology-differentiated and degressive support, has led to a share of about 25% renewable energy in the gross electricity consumption in recent years.* The EEG is one of the central pillars of the energy transition (Energiewende) to a renewables-based system, and has sped up the substitution of CO₂-intensive fuels with sustainable renewable energy in the electricity sector. Moreover, it has led to a significant diversification in plant ownership structure, an effect which neither tender systems nor certificate systems have achieved.
- Support systems exist to compensate for market failures such as unfair competition resulting from subsidized conventional and nuclear energy technologies. Establishing a fully transparent, fair and robust internal energy market is therefore a first step in the transformation process towards renewables. *It is clear that to create and maintain a level playing field in the energy market, distortions have to be eliminated, for example*

by phasing out fossil fuel and nuclear energy subsidies and removing other advantages incumbents still enjoy.

- As explicitly stated in the Renewable Energy Directive, support mechanisms are effective mostly due to their specific design. *Because of significant differences between Member States in terms of energy markets and resources, and resource priorities, a general solution does not seem equally effective and efficient for all Member States.* Furthermore, the Directive gives Member States flexibility to choose their national support mechanism and design it according to their priorities and needs. It is also the right of Member States as stated in Article 194(2) TFEU.
- The allowed state aid measures comprised by the Guidelines are supposed to be adjusted in light of experience. However, the draft Guidelines impose a specific support mechanism that does not exist in any of the Member States, i.e. a capped technology-neutral bidding process for feed-in premiums. *This new “one size fits all” instrument, which implies phasing out successful instruments such as the feed-in tariffs and thus destabilizes promising markets, has not been tested and thus lacks the evidence that it will deliver a strong investment signal.*

2. A technology-neutral support mechanism has negative impacts on the development of more innovative renewable technologies.

- “Technology neutrality” is a concept that plays right into the hands of conventional and nuclear energy: It is the argument used when trying to force renewables into a market on which they have to compete with technologies that have benefited and still benefit from massive support. Newer, not yet established technologies stand no chance on such a distorted market. *Applying the same concept to a RES support mechanism means favouring cheaper and more mature renewables. More expensive emerging technologies are not given the opportunity of undergoing a successful development.* Windfall profits and the lock-in of certain technologies are among the major negative consequences of a technology-neutral support mechanism.
- *Support mechanisms should be differentiated according to the development stage and particular features of various technologies, so that they ensure a sufficiently broad portfolio of renewable energy in a cost-efficient manner.* Technology-specific support has led to an impressive cost degression for the now mature renewable technologies and will do the same for the less mature if given the chance. Furthermore, it is up to the Member States to choose a diverse renewable energy portfolio that includes those less mature technologies for which they have the resources. This is a right Member States reserved for themselves in Article 194(2) TFEU, when the energy competence of the European Union was introduced by the Lisbon Treaty.
- *More important than forcing Member States into adopting an unproven instrument is ensuring that tailor-made national support mechanisms avoid overcompensation and guarantee the development of a wide range of technologies.* The Commission’s mandate is to assist Member States with the design of their instruments by promoting good design criteria and where necessary more convergence. Obliging Member States to use only a specific instrument is not part of the Commission’s mandate and is in direct contradiction to the RES Directive.

3. The unconditional opening of national support schemes could destabilize national support schemes and worsen the crisis currently experienced by the sector.

- *The draft Guidelines are in blatant opposition to Article 3(3) of Directive 2009/28/EC, which explicitly leaves it up to Member States to decide if and to which extent they support renewable energy generated in another Member State. Such cooperation raises a number of questions which shall be dealt with via a cooperation agreement on a voluntary basis. The bilateral negotiation process could be disrupted if Member States with less favourable sites were forced to open their system without their consent.*

4. The short transition periods imposed could create market disruptions.

- *The current draft states that, even if notified prior to the publication of the Guidelines, support mechanisms need to be in line with the new framework. It is important to note that the lack of grandfathering unnecessarily increases the legal uncertainty investors already face. More specifically, operating aid measures, and in particular feed-in tariffs, need to be aligned with the Guidelines by December 31, 2015. *Apart from contradicting the Renewable Energy Directive, such a short transition period contradicts the democratic procedures of amending legislation, including support mechanisms.**

NUCLEAR ENERGY – KEY POINTS AND RECOMMENDATIONS

1. Broadening the scope of the Guidelines to include nuclear energy sends the wrong signal.

- *Broadening the scope of the Guidelines so as to include nuclear energy would send the signal that it is financially and environmentally sound to build new nuclear power plants and heavily subsidize them. It is, however, important to bear in mind that nuclear power has already had over 50 years to prove itself as a secure and cheap technology, but has failed on both counts. The Commission should consider the significant costs and risks associated with nuclear energy, such as those for waste transport and disposal and the ones for decommissioning old power plants. Furthermore, if all hidden and open public financial support that nuclear energy already receives were given a price tag, the price of nuclear energy per kWh would soar enormously. There is thus no aspect that justifies more subsidies.*

2. The strict requirements for renewable energy are disproportionate in comparison with those for nuclear power.

- *Whereas the Commission requires the full market integration from renewables and subjects their support to rigid state aid rules, it proposes comparatively weak requirements for nuclear energy: The current draft remains vague in regard to the cap imposed on granting aid to nuclear power and to its duration. Instead of creating a framework which renders support to new nuclear compatible with the internal energy market, thus increasing the distortions renewables have to face, the Commission should concentrate on phasing out existing support for nuclear energy – and for fossil fuels – and on creating a level playing field for renewables.*

WHO ARE WE?

Founded in 1991, the German Renewable Energy Federation (BEE) is the umbrella organization for the renewable energy sector in Germany. Our mission is to improve the regulatory and legal framework for renewables and to promote a shift to renewable energy in the electricity, heating and cooling, and transport sector.

We are the voice of 26 industry associations of the hydro power, wind energy, solar energy, bioenergy, geothermal power and ambient energy sector, comprising more than 30,000 individual members and companies.

Our primary objective is to develop policy by providing input to relevant stakeholders. Our activities address a broad public, among which politicians, business leaders, citizens and the media. Our services include expert studies, thematic working groups, policy projects, conferences and workshops, expert hearings, networking possibilities and position papers.

For more information about us, please refer to www.bee-ev.de or contact us directly.

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