

EREF Press Release

Case T-694/14 European Renewable Energies Federation vs. European Commission- action for annulment of chapter 3.3.2 of the Guidelines for Environmental and Energy Aid 2014-2020

Brussels, January 2015

With the support and on behalf of its members, EREF has initiated annulment proceedings under Art. 263 TFEU specifically and exclusively against chapter 3.3.2. of the Guidelines for Environmental and Energy Aid 2014-2020. The case has been assigned the case number T-694/14 at the General Court of the European Union. EREF is represented by the German law firm Becker Büttner Held (BBH).

Chapter 3.3.2. of the Guidelines for Environmental and Energy Aid 2014-2020 contains provisions on the design of operating aid schemes for renewable electricity. It prescribes that producers of renewable electricity should be selling their electricity on the market and should be awarded market premiums, that the Member States should take care that no incentives are granted for production at times of negative prices and that producers of renewable electricity should be subjected to standard balancing obligations. Furthermore, except in some limited circumstances, the aid may only be awarded as result of a competitive – in principle technology-neutral - bidding procedure. Only small installations below 500 kW may still be awarded Feed-in Tariffs and only installations below 1 MW may be exempted from the bidding procedure.

EREF is of the opinion, that the Commission exceeded its competences under the Treaties by imposing such a rigid approach, which curtails the essence of Directive 2009/28/EC on the choice of Member States on their support mechanisms for RES in order to reach their binding 2020 targets. The Guidelines in this part infringe several fundamental principles of the law of the EU:

- First and foremost, under Art. 194 TFEU, technology-neutral renewable energy support schemes cannot be imposed on the Member States as they impact their sovereign energy rights. Anyways, the European Commission is not the EU legislator and can-not use guidelines to adopt “quasi legislation” to go against the provisions of EU secondary law, i.e. the Renewable Energy Directive 2009/28/EC, which – as the European Court of Justice has confirmed – does not harmonize support schemes and rather leaves the Member States in control.
- Second, the Commission infringed the duty to give reasons as there is insufficient justification given for the introduction of a technology-neutral competitive bidding procedure.
- Third, the Commission with the Guidelines infringes the principle of proportionality, as technology-neutral competitive bidding procedures are not suitable to achieving the Union’s renewable energy objectives, but create excessive burden on the Member States who will have to reform their support schemes, as well as on producers who will face considerable administrative “red-tape” when having to participate in the bidding.

EREF is a federation of national renewable energy associations from EU Member States, such as wind, solar, small hydro, bio-energy, tidal, wave, and geothermal sources. EREF is striving to defend the interests of independent power, fuel and heat production from renewable sources and to promote non discriminatory access to the energy market.

EREF

European Renewable Energies Federation

- Fourth, the Commission misuses its powers in the field of State aid to harmonize renewable energy support schemes – which would otherwise be outside the competences of even the EU legislator.

The Commission has responded, pleading that EREF as an association representing its members, would not be individually concerned. EREF has just submitted its response to the Commission's plea of inadmissibility. With that, the written procedure on admissibility is closed and we are awaiting the decision by the General Court on the next steps in the procedure.

Should the Court declare the action admissible, the proceedings will be continued with the parties exchanging their submissions on the grounds. An oral procedure may follow, once this process is closed, after which the General Court will give its judgment.

EREF members actively supporting this action include for examples the German Bundesverband Windenergie and the Westfalenwind GmbH, as well as the Austrian IG Windkraft and Kleinwasserkraft Österreich or the Swedish SERO and French EAF.

For more information on this matter, please contact

Dr. Dörte Fouquet
EREF Director
doerte.fouquet@eref-europe.org

Dirk Hendricks
EREF Senior Policy Advisor
dirk.hendricks@eref-europe.org