

EREF's reply to the European Commission's consultation on the General Block Exemption Regulation

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By and large, **EREF welcomes the European Commission's efforts to review the State aid rules and to simplify where possible.** State aid still is an important tool for governments to allow promoting the deployment of renewable energy without unduly distorting competition in the internal market. While not all Member States have designed their national renewable energy support schemes as State aid, some of them have and the rules in both the General Block Exemption Regulation and the Environmental Aid Guidelines, which set out the main rules for State aid discipline for the renewable energy sector, have provided a good framework for that in the past. EREF is convinced that they could continue to help fostering the deployment of renewable energy in the European Union in the future.

However, **EREF would first like to express surprise** that a consultation has been launched on the General Block Exemption Regulation without the content of the new (Energy and) Environmental Aid Guidelines being known yet. Those two instruments belong together as a package, so it seems that it would have made sense to publish a draft of the Guidelines as well. For renewable energy, many Member States have designed their national support schemes as State aid in line with the Environmental Aid Guidelines and their schemes have been approved by the European Commission accordingly. Now, it is understood from the Explanatory Memorandum and the Draft General Block Exemption Regulation published for consultation that the Commission intends to broaden the scope of this instrument to allow more State aid schemes the benefit of not having to be notified in advance. However, **without knowing whether and to which extent those schemes would still fall under the new (Energy and) Environmental Aid Guidelines, it is hard to say whether the extension of this one instrument is eventually for the better.** If for example the scope of the (Energy and) Environmental Aid Guidelines to come is narrowed, then the overall package may not contribute to improving the framework for renewable energy support but rather endanger the development and

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 is a member of EREC, the European Renewable Energy Council.

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deployment of renewable energy in the future. So EREF regrets that the Commission did not take the chance to make the most of the consultation by publishing both drafts and thus better inform all stakeholders on this matter.

As regards the content of the Draft General Block Exemption Regulation, **EREF is glad to see** that the European Commission is keeping up its approach of **considering investment aid to renewable energy projects up to a certain percentage of the eligible costs generally compatible with the internal market** and thus does not require notification in accordance with the procedure mentioned in Article 108(3) of the Treaty on the Functioning of the European Union. Indeed, many Member States have programmes in place awarding a certain grant to investments in renewable energy equipment. Those programmes may provide very interesting incentives in particular for small-scale installations and self-consumers. For example, the German Bundesamt für Wirtschaft und Ausfuhrkontrolle (BAFA) supports private households who switch to renewable heating installations with certain lump-sum payments.¹ The German KfW grants loans for renewables projects under very advantageous conditions and with very low interest rates, from which also bigger projects by local and regional power producers may benefit.² Thus investment aid as it is allowed under the General Block Exemption Regulation makes an important contribution to the deployment of renewable energy. The exemption from notification under the General Block Exemption Regulation not only sets a very important political sign, as those measures are generally considered compatible with the internal market, but also allows the Member States more flexibility with the development and adaption of their national support schemes in line with the very positive learning curves of all renewable energy technologies and thus to effectively avoid overcompensation.

Thanks to those learning curves, and thanks to the flexibility the General Block Exemption Regulation allows in order to adapt the respective national support programmes without each time having to notify the changes, **EREF suggests that the percentage of 45% (20% for small-sized and 10% for medium-sized undertakings) of the eligible costs as it is set in Article 23 of the current Regulation should be kept** as maximum percentage for allowable investment aid. As the investment costs themselves are constantly falling for all renewable energy technologies, this very positive development should not be punished by lowering the extent to which those technologies may be

¹ See: http://www.bafa.de/bafa/de/energie/erneuerbare_energien/.

² See: <https://www.kfw.de/inlandsfoerderung/Unternehmen/Energie-Umwelt/Erneuerbare-Energien/Foerderratgeber/>.

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supported. Further, as the financial support is anyways limited to a certain percentage of the investment costs, this cannot per definition result in overcompensation.

However, while the alternatives in Article 34 par. 4-7 of the Commission's Draft General Block Exemption Regulation are thus generally welcomed, **EREF is concerned about the Commission's proposed new alternative**, as it is presented in Article 34 par. 8. In particular, EREF would like to draw attention to two points:

- First, auctioning systems, while they may in principle constitute a good way to find out about the real costs of a certain project, in practice **discriminate small projects and thus in particular small power producers**. As a start, authorities will be inclined only to consider applications by large projects or consortia, as it would be expensive and time-consuming to go through several bids by smaller projects. This effect is unlikely to be avoided by the Commission's call for non-discrimination, but will occur almost naturally, it appears. As a result of this, small power producers will have to undertake extensive efforts to bundle their bids in order to have any chance at all. And even in case they manage to submit a bid of such a size that the authorities would consider it in their evaluation, experience has shown that due to economies of scale tendering procedures are generally won only by large-scale projects. Thus, an auctioning system would play in the hands only of the (former) incumbents still active in the energy sector and would thus **run counter to the European Commission's objectives of liberalizing and fostering competition in the energy market**. EREF therefore **seriously questions the Commission's expression of preference** for such a system by making it eligible for the benefit of not having to be notified for.
- Second, **EREF disagrees with the Commission's idea that such auctioning systems should be open to bids from all Member States**. While it is understood that discrimination of products based only on their country of origin generally disturbs the market, the story is significantly different for renewable energy: Not all Member States have the same potentials and same ambitions for renewable energy deployment. Further, the Member States, according to Article 194 of the Treaty on the Functioning of the European Union, are sovereigns over the choice and conditions for exploitation of energy resources and the general structure of their energy supply system. That is why the Directive 2009/28/EC sets national targets and allows for national support schemes. The Directive even explicitly mentions that the Member States have to remain free to adjust their national support schemes to the developments and costs

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and that they have to decide themselves whether and to which extent they support renewable energy produced in other countries. Those provisions are not for nothing. While there may be an argument that for the environmental benefits of renewable energy, thus the reduced carbon emissions for example, it does not matter where in the European Union the renewable energy power plants are located, this argument will not stand in practice. **Member States will simply not be able to defend such a system before their electorate. Governments supporting renewable energy will lose votes and eventually be followed by governments not supporting renewable energy.** The transition towards a more sustainable, renewable energy supply as the European Commission envisions it will in the not-so-very-long term be stopped. Accordingly, **EREF strongly dismisses all the Commission's proposals relating to a mandatory obligation** on the Member States to open up their national support schemes and opposes giving any incentives such as the exemption from the notification according to Article 108(3) of the Treaty on the Functioning of the European Union. **The Commission's Draft General Block Exemption Regulation – while it just offers an alternative and does not oblige the Member States to open up their support schemes - with this feature sets a dangerous political sign and EREF urges the Commission to make clear that the Member States remain sovereigns over their energy mix and the ones to decide whether and to which extent to support renewable energy generation in other countries.**

As regards the Commission's proposals in the Draft General Block Exemption Regulation, that aid may only be granted if renewable energy producers take on **certain balancing responsibilities, EREF principally agrees.** However, it must be stressed that such responsibilities then need to be well-defined and targeted to the specifics of the respective renewable energy producers. Not all technologies are the same and depending on the size of the plant there may be significant differences in what balancing responsibilities they can take on and on which level. EREF thus calls for **intense dialogue when defining the roles of renewable energy producers wherein not only the big companies but in particular small independent power producers should be involved.**

Further, and with a view to the upcoming new (Energy and) Environmental Aid Guidelines, EREF likes to encourage the European Commission to clarify the future handling of **“extra environmental costs”** and establish a consistent approach with the General Block Exemption Regulation. It is suggested

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that - as a practical approach – those costs should be included as parameters in an economic-efficiency analysis, and for example the recent extensive research for the German Agency for the Environment (Umweltbundesamt) could be used as a basis.³

³ Rosenfeld, Lünenbürger, Ruskowska, Rechtliche Untersuchung des Begriffs "umweltbezogene Mehrkosten" in den Umweltbeihilfeleitlinien; UBA-FB 001714, März 2013 <http://www.uba.de/uba-ino-medien/4452.html>