

EREF

European Renewable Energies Federation

12. 12. 2013

Urgent appeal not to open full investigation against the German Feed-In Law and to review the draft Guidelines for Energy and Environment

Dear President of the European Commission, dear Commissioners,

EREF has become aware of two most important current moves by the Directorate General Competition (DG COMP) which both substantially endanger investors' security in renewable energy technologies and projects in the EU 28.

As much as we need and honour DG COMP fighting unjustified State aid and taking serious the role of the Commission to be the watchdog of the Treaties, these recent moves of DG COMP are set to damage and immediately put an end to the most successful, effective and cost-efficient support mechanism for renewables, the Feed-In Tariff and the whole German "Energiewende", where the rapid integration of increasing shares of renewables is a major backbone of this system change.

Feed-In Tariffs have helped to rapidly decrease renewable technology prices, have created sustainable jobs and increased prosperity in parts of our economies, in Europe and beyond. We see a serious threat in the short-sighted and somewhat stubborn approach taken towards the German Renewable Energy Feed-In law (Erneuerbare Energien Gesetz, EEG) by the current State aid pre-investigation against Germany and in parallel by the attempt of slashing Feed-In mechanisms under the currently discussed new State aid Guidelines for energy and environment.

It seems that DG COMP is trying by all means to get hold of the German EEG as State aid in order to restrict, drastically change and control it under the new set of Guidelines for State

EREF asbl – Brussels Representative Office – Avenue Marnix 28, B-1000 Brussels,
Tel.: + 32 2 204 44 00 Fax: +32 2 204 44 99
www.eref-europe.org
VAT: BE 0472 943 789

aid for Energy and Environment. Both proposals – the State aid case against the EEG and the Guidelines - will shortly be on your tables for final decision and we urgently appeal to you not to open the formal investigation procedure against the German EEG and likewise to send the draft guidelines back to the drawing board.

Obviously, more time is needed for reflection within DG COMP and the Commission as a whole, with input from Member States and stakeholders, to develop and design a new set of Guidelines which better reflect the current reality in the energy world with increasing influx from renewable sources. We fully accept the need for better guidance in a changing energy world, but this new set of Guidelines as drafted now would certainly not provide appropriate answers, neither for the incumbent industry nor for the renewable energy industry.

We do not mean to take too much of your time today, but we will only very briefly outline our main concerns and arguments against the current moves of the DG COMP under both aspects and therefore we will focus on the questions of state aid and the German EEG:

With decision of 22nd of May 2003 and after a long dispute – which was decided by the European Court of Justice and in favour of Germany in its ruling that the German feed-in mechanisms under the preceding law to the EEG (the Stromeinspeisegesetz- StREG) did not involve State aid (Preussen Elektra case and judgment C-379/98) – the Commission had in 2003 finally accepted that the German EEG does not constitute State Aid (NN 27/2000).

The EEG with its inherent reform, evaluation and progress mechanisms has since been amended several times without changing the law's core principles:

The legislation sets the rules under which the market organizes the guaranteed access of renewables, the remuneration to be paid to producers and the need for balancing, resulting in distributing costs among consumers. The legislation does neither guarantee nor engage with state funds.

With the entry into force of the Regulation concerning the further development of the nationwide equalization mechanism (AusglMechV) on 01.01.2010, the existing procedure for balancing the loads from the EEG was modernized in order to facilitate on the one hand market penetration of renewable energies; on the other hand, seeking to ease and streamline the balancing mechanism among the market players by defining a strong role of the transmission system operators to fulfil the balancing obligation, which is an inherent part of the Feed-In Mechanism, and the responsibility of all market participants in this field. By restructuring roles and by removing the former role of the association of grid owners (VNE) the law within the set of established responsibilities did in no way create or imply imputability of the State. If this modernisation of established roles among the market players had resulted in State aid , then – logically – already the guaranteed and priority grid access for producers of energy from renewable sources – as one of the guiding principles of the EEG – would have been a state aid measure from day 1 of German Feed-In Laws in the

1990ies, which was clearly denied by the Preussen Elektra ruling of the ECJ and acknowledged by the Commission with its decision NN 27/2000.

DG COMP is arguing that new developments in the case-law by the ECJ, such as the Essent case (C-204 to 208/12) have changed the picture. However, as recently confirmed by the ECJ , e.g. in the CIDEF case (Case C-677/11), the Preussen Elektra judgment is still valid.

We firmly ask you not to be confused or blindfolded by DG COMP but to clearly question what (if anything) has actually changed in the guiding principles of the EEG since the Preussen Elektra ruling. This will certainly lead you to the conclusion that there is obviously no State aid involved.

Directly linked to this approach by DG COMP is the question as to whether the exemptions for energy intensive industry in Germany is to be considered as State aid. These exemptions could only be considered as State aid, if the balancing procedure as such were State aid. Our German member associations are working hard to convince the German Government and Parliament that a return to more restricted conditions for exemptions is needed – applying only for a small number of companies actually affected by international competition. Like EREF, however, they are convinced that this debate needs to be decided in Germany in terms of successfully implementing the energy transition, because there is nothing in the law that involves State aid procedures on EU level.

With an opening of full investigation procedure, the German Energiewende would come to a halt with immediate effect on the same day. This would seriously deteriorate the trust of the German population in the European Union and its institutions.

In conclusion, we kindly and urgently ask you not to vote for the formal opening of the State aid in-depth investigation against the German EEG and to send back the draft guidelines for better exchange with the stakeholders and improvement

Sincerely,



Rainer Hinrichs-Rahlwes

President