

Consultation paper State aid for environmental protection - Questionnaire for stakeholders -

Review of Community Guidelines on State Aid for Environmental Protection and environmental support measures in the General Block Exemption Regulation

QUESTIONNAIRE

ABOUT YOU

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Please describe the main activities of your organisation:

- a. Please identify whether you can be considered as being active on the financing supply or demand side or representing public authorities or other stakeholders.

The European Renewable Energies Federation (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 determined to promote the creation, continuation and further development of stable and reliable framework conditions for renewable energies. EREF therefore engages for a sustainable set of support mechanisms for renewable energy sources and for ambitious and legally binding targets for renewable energy beyond 2020.

¹ OJ L 145, 31 May 2001, p. 43.

- b. Please indicate the size of your company (in terms of turnover and number of employees) or your organization (in terms of members).

EREF represents national renewable energy associations. With 30 members, EREF represents the renewable industry of 15 European Member States.

1 GENERAL QUESTIONS ON ENVIRONMENTAL PROTECTION MEASURES

Evolving design of State aid measures

- 1.1 Have State aid instruments been adapted in your country since the introduction of the 2008 Environmental Aid Guidelines? For example, changes in types of aid instruments, in aid intensity, in selecting aid beneficiaries (e.g. via subsidy tenders or other selection processes)? Have State aid measures been phased out? Please explain.

As a non-profit organisation EREF represents independent producers of electricity, heat and fuels from renewable energy sources, such as bio-energy, solar, wind, small hydro, and geothermal sources in the different European Member States. EREF's members are therefore very active and have experience from all the EU Member States.

EREF's members were and still are directly involved in the design and benefit from support mechanisms for RES which fall under the definition of State aid in Article 107 TFEU, such as for example in Austria, the UK or Slovenia.

The effectiveness of State aid measures

- 1.2 In your experience, how do State aid measures contribute to an increase in environmental protection taking into account other already existing mechanisms to promote environmental protection, such as regulation, taxation, or market-based mechanisms (e.g. ETS)? Are such considerations taken into account by Member States when designing State aid measures?

Experiences gained with the implementation of the RES Directive shows that national support schemes, some of them falling under the State aids regulation, implemented for renewable technologies have allowed the European Union to significantly increase the share of renewable energy sources. According to the Commission's data, the production of energy from renewables grew by 12% in 2010 alone. Countries that have implemented support schemes and state aids have seen an impressive uptake of renewable technologies. For instance, in the PV sector, in 2011, 21.9 GW were connected in Europe (compared to 13.4 GW in 2010). New installed capacity in Europe in 2011 accounted for 75% of worldwide new capacity.²

This success is first and foremost due to the implementation the national support mechanisms Member States have put in place to level the playing field for renewables and overcome the existing market failures. Those support systems have significant differences in their design so as to optimally respond to the needs of the respective national market. Some of them are and have been notified as State aid measures, providing operating aid to the RES producers, such as the systems in Austria and in the UK. However, other systems are designed in a way that they do not fall under the definition of State aid in article 107 TFEU. Further, and in addition to the State aid measures in the form of operating aid, State aids are very effective for the support of research and development, to ensure the implementation of pilot projects and for the promotion of innovative technologies. Therefore, both support schemes,

² Figures from the European Photovoltaic Industry Association (EPIA), Global Market Outlook report, May 2012

whether or not designed as State aid, and additional aid measures may be needed and are successful in promoting renewables depending on the specific in the respective national markets in the Member States.

The Climate and Energy package adopted in 2008 also included the EU ETS, which was intended to be market-based mechanism to internalise the cost of carbon and therefore promote the development of low-carbon technologies. However, the implementation of the scheme is proving that the mechanism is failing to promote clean investments as the carbon price is dangerously too low and the cap too high and therefore the EU ETS fails to help the EU achieve its 20-20-20 climate targets.

As a conclusion, the co-existence of individual grants or investment aid schemes and general support schemes, possibly designed in the form of State aid, is needed if the EU wants to reach its 2020 commitment as market-based instruments have been so-far ineffective and will probably not function properly in the near future.

- 1.3 Based on your experience which aid instruments rank highest in terms of their overall effectiveness in terms of achieving the environmental objective and phasing out the need for State aid (e.g resulting in competitive and integrated renewable energy)? Please explain.

There is no “one-size-fits-all” aid instrument as the effectiveness of different aids depends on the technology, the market segment, the Member State... So the EU should not try to identify the best instrument and harmonize it across Member States.

When it comes to phasing-out state aids, again, it is very specific to the different national markets and different renewable technologies. Some renewable technologies on some markets are already close to reaching the LCOE (levelized costs of electricity) status despite the present imperfect markets. Others, less mature technologies are still on their way but with equally clear digression curves and all face the obstacle of high subsidies to fossil fuels and nuclear power. Many technologies need more time to become cost competitive, and will need further financial support and in particular investment security. State aids for renewable are made to support the development of a young industry to allow the shift from the Research and development stage to the large-scale market deployment stage. State aids should then be applicable until technologies become mature. However, in order to ensure that those mature technologies can fairly compete of the market, State aids should not be removed before market failures are corrected.

- 1.4 Are in your experience certain aid measures more efficient for keeping budgets under control? Is the amount of public spending needed to incentivise private investment in order to achieve a higher degree of environmental protection considered/measured? Please substantiate your answer.

EREF understands the necessity for national governments to control the budget allocated to State aids for renewable energy technologies. However, this should not justify “stop and go” policies that create legal uncertainty that jeopardise investments in such technologies. To avoid such issues, support schemes should be (regularly, but not too frequently) adapted and reformed in order to match the technological development of a very dynamic industry, but policy makers should remain vigilant to keep legal certainty and long term stability and always engage the concerned industry before changing the type or level of support.

- 1.5 When different technologies could be supported to achieve an environmental objective, in your experience, is an explicit choice between technologies made in designing State aid schemes? If so, how was such choice made and which? Do you believe that certain technologies or projects should not have access to State funding? Please explain.

When the European Union adopted its Climate and Energy package in 2008, a clear choice was made to broadly support the development of renewable energy sources across Europe. The choice was repeated more recently in the Commission 2050 Energy Roadmap where the massive development of RES is presented by the Commission as the “no-regret” option. Therefore, State aid schemes are designed to promote renewable technologies specifically.

However, the main precondition for a sound and economically reasonable transition towards a sustainable energy system based on Renewables is to eliminate all remaining subsidies and competitive advantages for “conventional” energy sources including the substantial support to the nuclear industry that contradict the climate policy of the EU. The lack of internalisation of costs (e.g. environmental, social, health) makes those sources artificially cheap. Were those costs to be internalized and national State aids prohibited, an important step would have been made for renewables to become fully competitive and therefore to decrease support for renewables in the future. EREF believes that nuclear energy should not have access to State funding.

- 1.6 What are the main potential negative effects of State aid for environmental protection in the context of distortions of competition and effects on trade? Is there a difference between operating and investment aid (e.g. in distortive access or allowing market access)? How are or can these effects taken into account? Please substantiate and give concrete examples.

In general terms, State aids could pose some competition issues.

Yet, when it comes to the energy market and the development of renewable energy sources, the current market is already very much distorted. Therefore support is needed to level the playing field. Renewables are new players in a distorted market, trying to live up against the existing structures. State aids are not made for protecting a separate and undisturbed renewable energy space, but to facilitate fair and level market participation for renewables.

EREF seeks to highlight that in distorted markets support for renewables is not distorting but rather facilitating competition. Without distortions such as:

- subsidies to fossil fuels which are still about four times as high as any subsidies to renewables,
- market power of incumbents as raised by the European Commission in its communication on “Making the Internal Energy Market”
- Non-transparent grid tariffs etc...
- No or inadequate windfall profit tax for nuclear
- No full insurance risks for nuclear
- Lack of clarity on nuclear waste storage and dismantling funds for nuclear

most renewables energy sources would already today easily be cost competitive.

EREF emphasizes that State aids to renewables do not distort but ensure competition and even if market distortion are resolved on the longer term, competition issues due to renewable state aids are not foreseeable yet. Therefore both investment and operating aids are needed for the time being.

2 GENERAL EXPERIENCE WITH THE ENVIRONMENTAL AID GUIDELINES

- 2.1 What is your general assessment of the current Environmental Aid Guidelines on State aid for Environmental Protection: what has worked well, and what has worked not so well? Have they given appropriate guidance for Member States to design well targeted environmental aid measures. Please substantiate your answer.

As long as market failures exist, it is clear that some measures are needed to address those failures. Those market failures can be addressed both by direct grants and investment aid schemes, as well as more general support schemes supporting the production of RES. Some Member States have chosen to design their support schemes granting operating aid to RES in a way that falls under the definition of State aid in Article 107 TFEU. The Environmental Aid Guidelines have been a useful tool in this respect, as they provided the Member States with a framework on how to design their support schemes for renewable energy so that they would be compatible with the common market and get clearance by the Commission. The Commission's positive assessments of the support schemes that do constitute State aid measures and affirmation that they are compatible with the internal market confirm this.

A problem that might exist in some Member States, and that is not as such directly addressed by the Guidelines, is that some Member States fail to appropriately involve the industry. In fact, the Guidelines aim at getting the amount of aid right and avoiding overcompensation. Therefore, EREF believes that the guidelines should require better integration of the industry in the consultation process before deciding about aid – which knows best about this – in this exercise.

However, the more general problem with the Guidelines is that – compared to the mechanism under the General Block Exemption Regulation – support schemes for renewable energy that do constitute State aid still need to be notified. While investment aid to renewables is exempted from the notification procedure when it is in line with the General Block Exemption Regulation, operating aid is not. However, as mentioned above, due to the market failures specific to the different energy markets in the Member States, such as incumbents and oligopolies interfering with fair market conditions and hampering access, regulated prices or support to non-renewable technologies, investment aid alone does not normally suffice for the time being to effectively support renewables. Operating aid is needed to address those failures.

EREF would like to emphasise that the notification obligation for support schemes designed in accordance with the Environmental Aid Guidelines is problematic as the notification procedure takes time and thus delays the release of funds, as no aid may be granted before the Commission has given its consent. Although there are normally no problems with getting clearance by the Commission, there is – in addition to the delay – still a factor of uncertainty, both of which detriment investors' confidence and thus hamper the growth of the renewables industry. Further, there are cases of doubt whether a measure does or does not constitute State aid, and the insecurity as well as the potentially drastic consequences of non-notification could in those cases be disastrous for the industry as they seriously undermine investors' confidence.

The problem is even worse considering the specifics of the support for renewables: due to the fast developments in the renewables sector and in the energy markets in general, there is a need for flexibility and changes have to be done on a regular basis. However, the notification requirement and the waiting period significantly hamper this flexibility and thus to some extent stand in the way of getting the amount of the aid right.

It would thus be preferable if renewables support schemes designed as State aid could – under the condition that they comply with similar requirements as the ones set out in the Environmental Aid Guidelines – fall under the regime of the General Block Exemption and no longer need to be notified.

This would give the Member States more room to manoeuvre and work together with their industry on getting and keeping the amount and structure of the aid needed to correct the various specific market failures in the respective Member States.

However, the requirements for compliance should remain flexible, as due to the differences in the national markets within the Member States and the differences in the technologies, as well as the differences in their interactions, it is impossible to have a “one-size-fits-all” solution. In any case, the Environmental Aid Guidelines should remain in place as a fall-back option.

2.2 Have the Environmental Aid Guidelines in your experience achieved the goal as stated in paragraph 4 of contributing to implement the environmental aspects of the energy- and climate change related targets? Please explain.

The Environmental Aid Guidelines are certainly a good tool to help achieving the European Union’s climate and energy related targets, and in particular the target at least 20% renewable energy in 2020 and potentially also that one of 20% increased energy efficiency by 2020 (though here, unfortunately, the uptake was so far less due to lack of any EU legislative framework for targeted support).

However, those targets have not been achieved yet, and so the Environmental Aid Guidelines and their provisions in those respects are still very important. Together with the legislative framework to promote renewable energy and energy efficiency, they can make achievement of those targets possible.

2.3 Are the Environmental Aid Guidelines still addressing the most important market failures hindering environmental production and in particular the achievement of EU 2020 objectives?

Reaching a share of at least 20% renewable energies in the European energy supply is one of the targets that the European Union has specifically committed to. Beyond 2020, this development is supposed to continue, as Europe is heading to become a low-carbon society, with a strong economy and innovative industry. Renewables will play an important – and inevitable – role.

However, as mentioned above, renewable energy for the time being and without significant changes in the energy market may not be able to compete without some form of financial support which may include State aid measures. The reasons for this are diverse, and differ from Member State to Member State. Some of the most common market failures that exist in almost all of them, though to varying degrees, relate to the fact that as it stands there is no fair competition in the market as for example coal or nuclear energy are heavily subsidized and as in the many partly quite fragmented markets there are still national or regional (almost-) monopolists which hinder market access for renewables. Generally, in the way the energy market works, renewables hardly have a chance to compete on price terms, as their availability is predetermined and they thus cannot influence the price-setting. As long as those distortions and inherent discriminations against renewable energies exist and as long as the energy supply system has not been transformed in a way to make all energy sources compete at level playing field, the Environmental Aid Guidelines will be needed.

3 QUESTIONS ON AID MEASURES SUBJECT TO A "STANDARD ASSESSMENT" (SECTION 3.1 OF THE ENVIRONMENTAL AID GUIDELINES)

Aid for renewable energy sources

- 3.1 Based on your experience, what mechanisms do you consider to be the most effective to ensure that tenders are competitive, transparent and on discriminatory?

In the renewable energy sector, there is no one-size-fits-all approach possible. What would work for a technology in a specific market could not work for the same technology in another market. Therefore, even if the European Commission is encouraged to help Member States sharing good practices, an overall European system should not be promoted.

National government can only be incentivised to work in close collaboration with the national targeted industry when preparing tenders.

- 3.2 Do certain aid measures or aid instrument to support renewable energy sources on the basis of the Guidelines, provide in better results in terms of renewable energy becoming competitive and being integrated in the energy market? Please explain.

Experience gained with the implementation of the RES Directive shows that national support schemes, some of them falling under the State aids regulation, implemented for renewable technologies have allowed the European Union to substantially increase the share of renewable energy sources. According to the Commission's data, the production of energy from renewables grew by 12% in 2010 alone. Countries that have implemented support schemes and state aids have seen an impressive uptake of renewable technologies. For instance, in the PV sector, in 2011, 21.9 GW were connected in Europe (compared to 13.4 GW in 2010). New installed capacity in Europe in 2011 accounted for 75% of worldwide new capacity.³

While renewables technologies, thanks to State support, are becoming more and more competitive, support schemes and state aids instruments are not enough to ensure their complete market integration and competitiveness as many market failures still remain and have to be addressed.

4 QUESTIONS ON ENVIRONMENTAL AID UNDER GENERAL BLOCK EXEMPTION REGULATION

- 4.1 Could you please describe your experience with applying the rules of the Regulation in respect measures concerning environmental protection? Could you please outline your experience with each Article separately?

Art. 23 Environmental investment aid for the promotion of energy from renewable energy sources

Unfortunately, so far the General Block Exemption Regulation has played only a rather limited and subsidiary role concerning aid for the promotion of energy from renewable energy sources. Investment aid is – for the time being and as long as other technologies receive notified or non-notified operating aid – not sufficient to correct the market failures renewables are facing. It is however very useful as it allows for State aid measures without having to go through lengthy notification procedures and the

³ Figures from the European Photovoltaic Industry Association (EPIA), Global Market Outlook report, May 2012

resulting insecurity and impediment on investors' confidence.

However, as investment aid for renewables projects often is insufficient to address the existing market failures, the practical use of the GBER is limited. In fact, almost all Member States have system in place that supports not only the investment in renewables but also the actual production. Some of those systems are designed so that they constitute operating State aid.

However, experience with such operating aid to renewables shows that in almost all cases it gets clearance by the Commission – though only after the often rather lengthy notification procedure during which no aid may be granted.

Also, and as by their very nature the aid schemes for renewables are regularly revisited to avoid overcompensation incompatible with the rules of EU competition law, and to adapt to the progress in the different technologies, the notification procedure and the delays it causes appear quite burdensome.

Thus – and based on the general acceptance for aid to renewables in the context of the EU's renewable energy and climate commitments – it should be considered, it seems, whether such aid could not, under conditions as set out in the Environmental Aid Guidelines be brought under the General Block Exemption Regulation, no longer needing to be notified.

For the renewables sector needing investment security and clarity on timing for their business plans, as well as for legislators and regulators trying to comply with the basic principle that aid may not lead to overcompensation and thus trying to get and keep the amount of aid granted right, this would be a great help.