

Position Paper

The Revision of the Guidelines on State Aid for Environmental Protection and Energy 2014-2020

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Renewable roll-out supporting State Aid Guidelines are crucial

The European Commission's President, Ursula von der Leyen, has called for greater ambition and stronger targets in her European Green Deal, introducing the first European Climate Law to enshrine a carbon-neutral commitment by 2050, with MEPs calling for a 60% GHG emissions reduction by 2030. The European Commission's Impact Assessment is suggesting to increase its 2030 renewable energy target from 32% up to 38-40%.

The Member States must significantly accelerate and increase the volume of the uptake of all available renewable energies on their territory and strive for an integrated energy transition, which includes all sectors. For this to be achieved, it is an inherent part of the current energy legislation that the renewable energy sector and in particular independent renewable energy producers as well as citizens, renewable energy communities and prosumers can rely on a stable legal framework and clear, robust national support schemes in the EU Member States.

First of all it is important that the environmental and climate imperative is given the highest priority and consideration. Europe has only 9 years to drastically reduce the GHG emission level by 2030 and to achieve a complete reduction of 100 % by 2050. The European Parliament just recently and within the legislative procedure for a new EU Climate law called for a minimum 60 % GHG reduction in the EU by 2030, thus 5% more than the current proposal of the European Commission. The forceful climate ambition of Europe implies that the rapid deployment of renewable energies and strong sector coupling mechanisms are of overall public interest in the EU and its Member States.

Support mechanisms for renewable energies and related energy system change technologies must be defined from now on as matters of "public interest". With an adequate support design and answering to the established Altmark Trans Criteria of the ECJ (Case C-280/00), most of these support mechanism under public interest design would therefore no longer be evaluated under the state aid scrutiny, thus saving enormous amount of time and creating robust investment security in an economy

needing to recover for the current pandemic. The criteria for this service of public interest should be fine-tuned by a specific energy system change agenda under a Council Regulation following Art. 107 Para 3 d) TFEU.

Only for specific cases, such as very large projects in Offshore wind or where renewable energy support might not fulfil the Altmark Trans criteria, would we need modernised and updated State Aid Guidelines for energy to further enhance the pathway towards our climate targets.

The current State Aid Guidelines on Environmental Protection and Energy (EEAG), published in 2014, were set to be revised in 2020; however, the European Commission has now extended the guidelines until 2021. The EEAG shook the foundations of the energy market by widely sidelining schemes based on well-established feed-in tariffs and premiums in favour of preferably technology-neutral bidding processes. While the EEAG foresaw exemptions from tendering and auctions, it championed these as general provisions compatible with the internal market.

The European Court overturned¹ a decision by the Commission, which had previously declared the German feed-in scheme of EEG 2012 incompatible with the internal market. This indicates that there may still be room for considerable improvement and for Member States to apply support schemes based on minimum prices in or outside state aid regulation. The application of general economic interest rules would further foster flexibility outside state aid scrutiny and accelerate legal and administrative processes and thus speed up the energy transformation. Experience from other sectors such as public transport and the related EU regulation (REGULATION (EC) No 1370/2007) of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road could serve as a starting point in establishing criteria for public service obligations (PSO). As mentioned, the Court of Justice of the European Communities in Case C-280/00 (Altmark Trans GmbH) ruled that compensation for public service does not constitute an advantage within the meaning of Article 107 of the Treaty, provided that four cumulative conditions² were satisfied.

¹ Case C-405/16P, Federal Republic of Germany v European Commission. 28 March 2019.

² The four criteria are set as follows:

- the recipient undertaking must have public service obligations and the obligations must be clearly defined;
- the parameters for calculating the compensation must be objective, transparent and established in advance
- the compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of the public service obligations, taking into account the relevant receipts and a reasonable profit;

Where the undertaking which is to discharge public service obligations is not chosen pursuant to a public procurement procedure which would allow for the selection of the tenderer capable of providing those services at the least cost to the community, the level of compensation needed must be determined on the basis of an analysis of the costs of a typical well-run company.

Moreover, in the case of public service, respectively Service of General Economic Interest (SGEI), the European Commission, the European Parliament and the Council should also look into modernising the current "Guide to the application of the European Union rules on state aid, public procurement and the internal market to services of general economic interest, and in particular to social services of general interest"³. EREF asks the Commission to reform these guidelines so that they are compatible with climate policy.

The new sustainable energy world with significantly higher and eventually dominant renewable energy shares in the systems needs Member States and EU Commission to overcome the narrow-minded sector-specific perspective, and it requires a holistic view of an integrated energy transformation in all end-use sectors, including enabling policies and regulatory tools.

Recommendations for improvement of the EEAG

The following is a set of recommendations for the revision of the EEAG, in order to accelerate the uptake of renewables in all Member States for those projects that do not meet the four Altmark Trans criteria.

1. Technology-Specific aid must be the rule, not the exception

Insisting that state aid be granted, as a rule, on a technology-neutral basis has had, in many Member States, the effect of funnelling support to projects that are advantaged in presenting winning bids. These projects, however, may not be the best adapted to the territory or to the specific system change needs of a specific locality and region. Each Member State has an energy mix, a specific grid and balancing situation, specific renewable energy roll-out and pathways, geographic and meteorological conditions, political and societal considerations and markets and regulatory frameworks which are unique to it. The design of support schemes and regulatory frameworks must take these into account in order for each Member State to be able to play to its renewable strengths, including the option of close regional and/or transnational cooperation. A balanced deployment of renewables because of technology-specific support schemes may, for many Member States, in fact be more cost efficient. Technology-specific auctions and targeted tools like minimum prices, contracts-for-difference, feed-in-premiums or -tariffs etc. for distributed and community-based installations can adapt more easily to the specific needs and the actual costs of the technologies in the specific regions. Member States should be free to

³ See Commission Staff Working Document, Brussels, 29.4.2013 SWD(2013) 53 final/2

choose appropriate technology specific remuneration mechanisms at their own discretion in order to accelerate the deployment of their preferred mix of renewables in all sectors.

Each technology has its own characteristic in terms of performance for the power system beyond the criteria of energy as system services and capacity guarantee. Technology neutral tenders are not able to deal with these requirements for power system stability.

- 2. Obligation for a bidding processes must be phased out and replaced by long-term investment, securing promotion mechanisms such as feed-in mechanisms.-Where it remains implemented, it has to be designed more carefully**

The current auctioning systems throughout Member States and the relentless insistence of using this artificial dogma in the current State Aid Guidelines have sabotaged any chance for a rapid and flexible up take of renewables and moreover a coherent sector-coupling system change.

The following problems related to auctions have been identified:

Results from auctioning have shown low realisation rates due to various reasons, including but not limited to, strategic/under-bidding and limited development of less mature technologies with Solar PV winning out in most technology-neutral auctions due to its low generation costs. However, Solar PV would not have become one of the cheapest energy forms if technology neutral auctions were introduced 10 years earlier. Solar PV also received considerable support through market development, in particular with the German feed in support system.

To reach the renewable energy targets every renewable energy project, with the requisite permission, will have to be utilised and developed. Therefore, there is a high risk that there are not enough projects to create the necessary competition for a cost-efficient auction. Alternatively, by creating an artificial shortening of the auctioned amount of MW to obtain enough competition, the fulfilment of the targets is endangered.

Therefore, Member States should be free to decide, just like many other policy areas, through which system they grant support in order to find the most efficient pathway to achieve the European renewable targets by 2030 and not be obliged to use an auctioning system.

If, however a Member State decides that auctioning is the most efficient and effective way to reach the targets, the bidding process has to be designed carefully:

It has become clear that the outcome of the auction depends heavily on the prevailing framework conditions such as the national renewables market, economic growth perspectives, and the

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existence of additional administrative and grid-related barriers. Auction design should be required to take these barriers and challenges into consideration in order to allow for the development of more innovative technologies with the potential for future cost reductions.

Primarily, these lessons strongly underline the need for Member States to conduct technology specific designs not only on an exemption basis. There needs to be greater specification about which auctions should require prior building permission, about minimum penalties for late or no deployment. In addition, there should be – jointly or alternatively - clear rules for creating specific tenders for locally owned and/or distributed installations.

If the mandatory use of auctions is not lifted, an alternative to the specific auction design for energy communities or other small and medium sized installations could be for Member States to have the right to grant direct support (e.g. guaranteed minimum prices) to community based and/or (partly) locally owned installations, up to a clearly defined capacity, covering small and medium sized projects in general. In the past, (including in the EEAG 2014-2020) a capacity of 1 MW for most renewable technologies seemed to be a reasonable approximation, with the exemption of wind power, where 6 turbines of an average capacity (at that time 3 MW) were considered appropriate by EC/DG COMP. Due to the climate urgency and to the development of the technologies, these thresholds should be raised to 10 MW for most renewable technologies and for wind energy 10 turbines with a capacity of 6 MW each. This 6 MW size per turbine will be the standard within the period of the next 5 years. These projects are within the possible limit that medium sized companies can realise.

EREF clearly calls for an exemption from auctioning for the above-defined projects. Already the need for advanced permitting as a pre-condition to take part in an auction underlines the absurd situation, where there is a delay of up to 3 to 10 years because of the permitting procedure. Deciding in advance which price and which technology can participate in an auction is disproportionate.

Manufacturers face economic risks if large shares of winning bids are not implemented. Risks of sunk costs due to heavy licensing procedure is a distortion between competitors and technologies. Moreover, it's a circular issue where parameters of the project design depend on the licensing trade-off between environment and social acceptance and on the other hand depend on the auction bidding in terms of price.

3. Small and Medium-sized energy producers and Cooperatives and Community Energy need appropriate regulation and support

While SMEs are defined in Section 1.2 of the EEAG, they are only mentioned in choice provisions at different points in the rest of the guidelines. As far as renewables are capital intensive, the project cost of capital is a very significant parameter in auction competition. SMEs do not have the same access to capital financing as companies. Therefore, auctions without specific measures for SMEs are a distortion between competitors. That is why winners of recent auctions are primarily big companies. This is an even bigger problem, when competing companies are (at least partly) state owned, which - compared to private SMEs - reduces their financing costs dramatically. Access to finance for SMEs could be greatly enhanced with a chapter specifically on the types of aid for SMEs. This would be in line with one of the central aims of the Clean Energy Package to put citizens at the heart of the energy transition.

In order to further specify the need for SMEs and Communities to be granted a clear, transparent and enabling framework, aid for Cooperatives, as well as Citizens and Renewable Energy Communities (RECs) should be dealt with in another chapter. They are structurally different from most SMEs – although these communities constitute SMEs as per the Commission Recommendation on the definition of SMEs (2003/361/EC) of 6 May 2003. There has been a noticeable decrease in participation by Renewable Energy Communities due to the transition from feed in tariffs to competitive bidding; this has pushed them out of the market and made it more difficult to obtain investment. Specific rules should clarify that – and under which conditions – direct support via FIT/FIP, net-metering, self-consumption is allowed.

RED II has recognised the importance of RECs, indicating that in order to achieve the targets for 2030, 2040 and 2050 citizens will be at the heart of the energy transition. Therefore, it is crucial that the transposition of Articles 21 and 22 of the RED II takes place and that an enabling legal framework removes the obstacles for energy communities. This in part, includes allowing Member States to provide support for local and community ownership of renewables in a manner that they believe is most appropriate and free from interference from State Aid rules. The European Commission must allow Member States to make nationally appropriate decisions on which sectors, territories and technologies they choose to support.

Local opposition to RES projects has a serious impact on RES development. The encouragement of citizen participation in and ownership of renewable energy projects is crucial, as it will lead to an overall increase in public support for these projects. Therefore, barriers such as mandatory auctioning should be removed and replaced by a system that might combine auctioning schemes - in case a Member State wishes to use auctioning schemes with tools to encourage community

and cooperative participation and engagement for small and medium sized projects outside auctioning in general.

Renewable energy communities must also enable citizens and businesses to cooperate, thus facilitating economically viable business cases by reducing administrative barriers and inappropriate network charges and other transparent fees and taxes. These communities can only function successfully if both citizens and businesses see some benefit.

Revenue sharing is an example of citizen participation and ownership, whereby the community buys the rights to receive a proportion of the revenue or profit from a commercial renewable energy project. This encourages the developer to work with the community and ensures both parties receive a benefit from the RE project.

4. Integrated Renewable Energy Projects (IREP) should be encouraged and supported

Support schemes have emerged which provide aid to project packages that combine a number of individual projects and/or technologies, which jointly can significantly secure and enhance the system transformation by providing security of supply, including auxiliary, balancing and other system services. Such combined renewable energy projects include renewable installations of different technologies and sources such as storage as well as grid and system improvements and community participation. Good practice examples of such integrated projects/packages and their support should be promoted in order to encourage these highly beneficial initiatives EU-wide.

Encouraging and supporting the development of integrated renewable energy projects would not only accelerate system integration of various RE technologies including across different sectors, but it would also accelerate the necessary system transformation towards a stable, reliable, integrated and affordable renewable energy system.

5. Complementing the CO₂ price with a reimbursement mechanism for citizens and SMEs

Research has suggested that a CO₂ price combined with a reimbursement mechanism for citizens, such as lowering their electricity tariffs or reimbursing a fixed amount, could help achieve the desired effect of rendering emitting industries more expensive while protecting low-income citizens. This would also enable SMEs to move faster towards sustainable energy supply and demand and thus broadly increase public support for the GHG reduction policies. Complementing such a CO₂ price with policies and tools such as removing subsidies and phasing

out/ruling out fossil-fuel based technologies like oil and fossil gas driven heating systems, or promoting the uptake of clean technologies, such as encouraging renewable energy driven heat pumps, boosting the sale of electric vehicles and accelerating/requiring renewables based charging infrastructure. These additional features of the CO₂ pricing would help reduce the costs of the energy transition borne by citizens.

6. Cross-border opening of support schemes to facilitate decarbonisation

The current Renewable Energies Directive 2009/28/EC as well as the new Recast Directive 2018/2001/EU encourage pathways to cross-border cooperation. In theory, there are considerable benefits to the cross-border approach such as reducing overall RES support costs, allowing Member States to make use of the renewable resources available while also encouraging them to attain and exceed their national targets. However, due to differing policy and regulatory environments throughout the Member States there is an added economic burden.

Policymakers should encourage (but not require) the most efficient use of renewable resources available throughout the EU by reducing investment risks. The revision of the EEAG should introduce possibilities for encouraging specific promotion programmes by Member States and the EIB in order to promote cooperation, including statistical transfer schemes within the EU. EREF welcomes the new Commission Implementing Regulation (EU) 2020/1294 of 15 September 2020 on the Union renewable energy financing mechanism as an additional deployment mechanism for new renewable energy projects. The aim is to fill any gap in the indicative Union trajectory, pursuant to Article 33 (1) of the governance regulation (EU) 2018/1999, and to contribute to the enabling framework, pursuant to Article 33(2) of this regulation, thereby supporting renewable energy deployment across the Union. Nonetheless, the major efforts have to be structured and realised in each EU Member State.

7. A smooth and clear transition between regulatory frameworks

A stable and predictable legal framework is a key factor in a decision-making process concerning investments in RES projects. Currently investors face the problem of a gap between the existing regulatory framework, involving the support schemes for RES projects, which soon will no longer be valid, and the future framework which is still unknown, not to mention its transposition into national systems. Such a period of limbo creates uncertainty for investors and slows down the uptake of renewables. It affects mostly renewables that are subject to longer administrative formalities. Therefore, the revision process of the EEAG must be completed as quickly and efficiently as possible.

Conclusion

The response to the Covid-19 pandemic has shown that the EU can act quickly and efficiently to provide fast tracked financial support. It highlights the willingness and capability of the EU institutions to find novel and flexible solutions in times of crisis. As the climate emergency is the greatest crisis faced by humanity, the same flexibility and urgency needs to be applied to limit the global temperature rise to the 1.5 C mark. Renewable energy deployment is at the heart of this energy transition and requires serious on-going, flexible, smart and effective strategic support. EREF strongly advocates for renewable energy uptake to be defined as a public service obligation of general economic interest. A complete revision of the EEAG is a prime opportunity to facilitate the rapid uptake and financial support for RE projects, allowing Member States to deviate away from the restrictive practices in place, towards a more flexible and adaptive approach. It is high time for small and medium sized projects to leave the auctioning scheme behind. The support schemes chosen by Member States - following public interest pathways - should correspond to their country specific characteristics and recognise all actors in the energy transition.