

New Guidelines on Environmental and Energy State Aid for 2014–2020

Energy

Abstract of Legal Analysis

Justice and Environment 2014

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Association Justice and Environment (J&E) as a European network of environmental law organisations has been working on energy and climate change related issues for five years tackling and analysing the matter from different legal perspectives. In 2014 J&E prepared an overview on the European Commission's new Guidelines on environmental and energy state aid for 2014–2020¹ and collected the key features of the EEA Guidelines in this abstract.

In April of 2014, the European Commission adopted its new Guidelines on environmental and energy state aid for 2014–2020 (EEA Guidelines). The EEA Guidelines represent the EU Commission's view on environment-related and energy-related national support schemes and their compatibility with ensuring fair competition on the EU's Single Market. They are applied from 1 July 2014 and will be applicable until 31 December 2020.

State support of generating electricity from renewables

The new guidelines promote a gradual move to market based support mechanisms for renewable energy. For the purpose of increasing cost effectiveness and limiting distortions, the guidelines introduce competitive bidding processes open to all generators producing electricity from renewable energy sources for allocating public support and replacing feed-in tariffs by feed-in premiums which expose renewable energy sources to market signals. However, the new guidelines do not affect existing schemes immediately.

Regarding aid for electricity from renewable energy sources, from 1st January 2016, public support can only be provided in the form of market-oriented mechanisms, such as premiums (a top-up on the market price) or tradable certificates. The EEA Guidelines require RE generators to sell the electricity in the market and be subject to balancing responsibilities (i.e., an obligation on producers to compensate for short-term deviations from their previous delivery commitments).

The EEA Guidelines gradually introduces competitive bidding processes for the allocation of public support. Bidding processes will be required for a small share of new electricity capacity but, as of 2017, such processes will apply to the award of all public support for renewables.

Feed-in tariff can only continue for small installations. Feed-in tariffs must be replaced by market premium-based support schemes by 2016; from 1 January 2016, all new operating aid for generation from renewables must be granted as a premium on top of the market price, with electricity generators being required to sell their electricity directly in the market. Exceptions are specified only for small-scale installations with an installed capacity of less than 500 kW (wind energy up to 3 MW or 3 generation units) and for demonstration projects.

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http://www.justiceandenvironment.org/_files/file/2014/New%20Energy%20State%20Aid%20Guidelines.pdf

Beneficiaries must be subject to standard balancing responsibilities, unless no liquid intraday markets exist. Furthermore, measures must be put in place to ensure that generators have no incentive to generate electricity at negative prices.

New operating aid for electricity from RES has to be granted as a premium in addition to the market price, or through a system of certificates with a price determined by market supply and demand. According to the EEA Guidelines, competitive bidding processes will determine who is eligible and what amount of funding is available, thus replacing market premiums defined by statute or otherwise.

In 2015 and 2016, at least 5 % of the planned new electricity capacity from renewable energy sources must be granted in **competitive bidding processes**. These procedures shall be based on clear, transparent and non-discriminatory criteria. The bidding process must be open to all generators producing electricity from renewable energy sources.

From 1 January 2017, in principle, **all aid granted must be awarded using such processes, except** where the Member State can demonstrate that

- only one or a very limited number of projects or sites could be eligible,
- a competitive bidding process would lead to higher support levels, or
- a competitive bidding process would result in low project realization rates.

Installations with **capacity of less than 1 MW, wind installations with an installed capacity of up to 6 MW or 6 generation units, and demonstration projects are generally exempt from the bidding requirements.**

The transitional provisions regarding to the introduction of bidding mechanisms provide that installations which started works (including any firm commitment that makes the investment irreversible) before 1 January 2017 and have received confirmation of the aid by the Member State before that date can be granted aid on the basis of the scheme in force at the time of confirmation.

Aid for energy from renewable sources other than electricity

In this case, support can be justified when it does not exceed the difference between the total levelized costs of producing energy from a specific technology and the market price of the form of energy concerned. Public support to renewables can only be approved until the plant has been fully depreciated. Exceptions exist for biomass and biogas plants.

The EC will apply the new guidelines after 1 July 2014 to all new schemes and individual measures on which it must decide. In principle, the EEA Guidelines will not affect aid granted to the owners of existing installations, these installations will continue to receive aid based on existing approved state aid schemes. If, however, a MS wishes to prolong or modify an existing scheme in the future, the EEA Guidelines must be complied with.

Future of State aid to food-based biofuel

The EC considers investment aid in new and existing capacity for food-based biofuel not to be justified. However, investment aid to convert food-based biofuel plants into advanced biofuel plants is allowed to cover the costs of such conversion. Other than in this particular case, investment aid to biofuels can only be granted in favour of advanced biofuels.

Whilst investment aid to support food-based biofuel will cease from the date of application of these Guidelines, operating aid to food-based biofuels can only be granted until 2020. Therefore, such aid can only be granted to plants that started operation before 31 December 2013 until the plant is fully depreciated but in any event no later than 2020. Thus, existing and newly notified schemes concerning food-based biofuel should be limited to 2020.

The EEA Guidelines includes detailed criteria for permissible operating aid to biomass plants after plant depreciation. These establish monitoring mechanisms also in order to avoid overcompensation.

Generation adequacy

Member States are allowed to grant support in order to secure adequate electricity generation when there is an actual risk of insufficient electricity generation capacity. This requires that the causes for inadequate generation are firstly analysed and all distortions preventing the market from delivering the right incentives for investments are removed. In case there is an actual risk of insufficient electricity generation capacity, Member States may implement so-called “capacity mechanisms” created for example to encourage producers to build new generation capacity or prevent them from shutting down existing plants or, alternatively, to reward consumers to reduce electricity consumption during peak hours.

Application of the EEA Guidelines

Until 1 January 2016 EU Member States have to bring existing aid schemes in line with the EEA Guidelines, except for schemes for operating aid for renewable sources and cogeneration. Such schemes will only need to be brought in line if they are prolonged or adapted. From 1 January 2016, support to new renewable energy installations should gradually begin to be based on market conditions.

Existing aid schemes concerning operating aid in support of energy from renewable sources and cogeneration only need to be adapted to EEA Guidelines when MSs prolong their existing schemes, have to re-notify them after expiry of the 10 years-period or after expiry of the validity of the Commission decision or change them.

Outlook

MSs have significant discretion when designing their public support measures and the EEA Guidelines will be further explained in the EC’s future practice in decision-making, however as the number of complex cases probably will increase, additional delays to the already slow state aid decision-making process is also predictable.

The EEA Guidelines do not explain under what circumstances national support schemes for renewables constitute state aid. The application of the EEA Guidelines will be formed on the basis of the EC's case-by-case decisions, therefore additional guidance can be expected, e.g., on interpretation of common assessment principles, exemptions for energy-intensive industries etc.

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