

AEBIOM response to the consultation on the  
Draft Guidelines on environmental and energy aid for 2014-2020

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Key messages

- The higher visibility given to state aid guidelines for energy within the environmental guidelines is a positive step, which we interpret as recognition that there may be other reasons than purely environmental ones for a Member State to grant aid to support Renewable Energy Sources (RES) or industries affected by carbon leakage. However, several provisions of the current draft Environmental and Energy Aid Guidelines (EEAG) would unduly constraint Member States' capabilities to reach their 2020 binding RES targets. In particular, the Guidelines should by no means restrict Member States' rights to support specific technologies.
- The aim of the State Aid regime should be to minimise distortions to the internal market which may be caused by public intervention, while at the same time providing a clear and stable framework for investors. With this in mind, the Commission should clarify the interactions between the EEAG and the General Block Exemption Regulation. The fact that both apply to operating aid is confusing, introducing further uncertainty for the stakeholders. In addition, clarity will also be necessary on the conditions under which existing support schemes for renewables will have to be adapted over time.
- Likewise, the very objective of the Guidelines should remain to set the limits within which state aid may be considered compatible with the internal market when it is granted to promote the execution of an important project of common European interest (e.g. environmental protection) or to facilitate the development of certain economic activities (e.g. the development of renewable energy sources). These criteria must not contradict Article 194 TFEU and Directive 2009/28/EC. In other words the EEAG should leave Member States flexibility on how to support RES and meet their 2020 binding RES targets.

- The EEAG assume there is a well-functioning internal energy market, which is not the case today (different grid costs, capital costs, administrative costs, electricity prices, etc). A fully transparent, fair and robust internal energy market with a functioning intraday and balancing market and sophisticated forecast methods needs to be in place before RES can fully participate and compete in the market in a level playing field and their support can be more market integrated. The focus should be put on eliminating existing distortions, e.g. phasing out fossil fuels subsidies and (still existing) benefits to incumbents.
- Support mechanisms are effective due to their design; therefore the Commission should promote overall good design instead of specific mechanisms. The 'Guidance for the design of renewables support schemes'<sup>1</sup> published by the Commission in November 2013 provides an excellent set of recommendations in this area. Like the Guidelines, the Guidance is concerned with over-compensation but takes a broader view of how over-compensation can be avoided. It recognises the utility of schemes with in-built digression that adapt remuneration levels to improvements in technology cost and, if implemented, would achieve the same aims as the Guidelines while allowing the MS to preserve the features of national support schemes that make them stable, predictable and investor-friendly;
- In particular, the technology-neutral approach as well as the distinction between deployed and less deployed technologies are irrelevant and would prevent Member States from designing technology specific, cost-efficient support mechanisms.

### General comment

Some key points are unclear and left to interpretation in the document. Just to state a few examples, there are clerical mistakes in paragraphs (122) and (123) and there are mistakes in logic and/or wording together with dubious formulations in paragraph (230). We regret the general low legal quality of the overall document which makes it difficult for stakeholders to contribute to the consultation in a meaningful way and undermine the transparency of the consultation process.

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<sup>1</sup> SWD(2013) 439 final

Parts I and II of chapter 5.2 "Aid to Energy from Renewable Energy Sources"

(116) The Commission will authorise aid schemes for a maximum period of ten years. If maintained, such measure should be re-notified after such period.

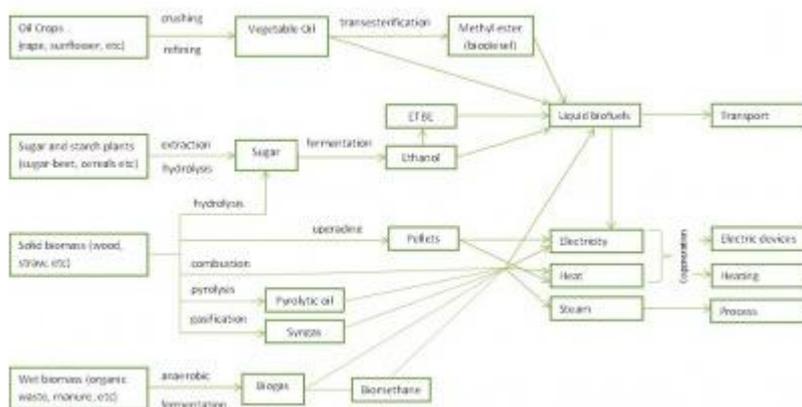
According to the draft, the Commission will authorise aid schemes for a maximum period of ten years. If maintained, such measures should be re-notified after such a period. What "re-notification" actually means is not clear. In this regard, a simplified procedure for those schemes not subject to any change would be appropriate.

Additionally, and for the sake of clarity, it should be highlighted that the 10-year limit applies to the overall support schemes; and not to the period of support that can be granted to individual projects operating under the scheme, usually ranging between 10 and 25 years.

(119) Aid to energy from renewable electricity sources should, in principle, contribute to integrating renewable electricity energy in the market. However, for certain renewable technologies or small types of installations, this may not be feasible or appropriate. In particular, specific aid measures may be needed to bring forward less deployed renewable technologies that can contribute to the decarbonisation of the energy sector in the longer term. Therefore, the Commission will differentiate in its assessment between aid for deployed and less deployed technologies, depending on their share in electricity consumption reached. Technologies with a share of at least [1 - 3]% in electricity production at EU level are considered deployed technologies, and technologies with a smaller share are considered less deployed technologies for the purpose of these Guidelines. Special conditions for small and first commercial scale installations, for biomass and for biofuels are also included to reflect their specific characteristics.

The distinction between deployed and less-deployed technologies included in the guidelines as it stands is artificial.

First of all, it is not clear what "technology" means in this context. As far as the biomass sector is concerned, there are different sorts of technologies used to produce biopower. For example, in the bioenergy sectors, many different technologies are available, as shown in the figure below.



Source: [http://www.aebiom.org/blog/category/about\\_us/about\\_bioenergy/](http://www.aebiom.org/blog/category/about_us/about_bioenergy/)

Secondly, while it is unclear if this distinction is based on the electricity consumption or the electricity production covered by a given technology at EU level (since both definitions are used), we consider this approach to be ill-designed for the following reasons:

- A “deployed” technology is not necessarily a mature one: using the degree of deployment as a parameter to automatically declare that a technology is mature is arbitrary. Such an approach would neglect the remaining efforts which need to be done in order to accompany a new technology to reduce costs and compete in a given market without dedicated support. Indeed, the market penetration achieved by a new technology is usually the result of the supporting framework in place and not an outcome of its intrinsic competitiveness.
- Considering the market penetration of a given technology at European level would introduce barriers to new market entrants: it would indeed constrain investors in under-developed markets to only rely on a more limited set of supporting instruments, simply because this technology has experienced market development somewhere else. Since the competitiveness of a RES technology varies from one country to another and is by no means only linked to the evolution of the cost component, such a logic is going against the establishment of a level playing field among investors across Europe.
- Given the current uncertainties on the evolution of the European electricity mix, which still greatly depends on the respective national choices, a technology considered “deployed” at a given point in time can very well be considered “less deployed” later on. Such an uncertainty would be detrimental to investors’ confidence.

State Aid rules should drive RES technologies to long-term competitiveness and market integration. Taking that into account we propose that, if necessary, the principles outlined in

the new European Investment Bank lending criteria<sup>2</sup> could be used to assess the maturity of RES technologies. The EIB distinguishes between mature and emerging technologies, “with a separate economic rationale for supporting each”:

- Mature technologies *“are those (...) where costs are not expected to decline significantly – although they are expected to decline more rapidly than conventional alternatives”*
- Emerging technologies are those *“which are currently not competitive with the least cost alternative” but “with a prospect of becoming competitive in a reasonable time frame”*.
- In addition, the EIB underlines that *“cost declines result from research, development and innovation, scale and learning by doing effects, and require the continued installation of capacity in the sector”*.

The current Commission’s proposal clashes with this approach and would on the contrary act as a major brake to the further research and development and cost decline of RES technologies.

AEBIOM therefore believes that this distinction between deployed and less-deployed technologies should be abandoned completely. Paragraph 119 (idem for all related provisions in paragraphs 120 and 129) should therefore be deleted. Each Member State should remain able to tailor-make its support schemes according to the remaining cost decline potential of a given technology and the competitiveness of this technology in a specific national market and segment.

#### I Aid granted by way of a feed-in-premium or feed-in-tariff

##### *Aid for deployed technologies producing electricity from renewable sources*

(120) For deployed technologies, operating aid for new installations will be considered compatible if all of the following conditions are met:

(120) (a) Aid is granted in a genuinely competitive bidding process on the basis of clear, transparent and non-discriminatory criteria.

AEBIOM is not against auctioning/tendering processes/schemes in general terms for large projects. However, we reject a “one-size fits-all” tendering approach imposed EU wide through the state aid guidelines.

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<sup>2</sup> EIB and Energy: Delivering Growth, Security and Sustainability – EIB Screening and Assessment Criteria for Energy Projects, 25 July 2013 - [http://www.eib.org/attachments/strategies/eib\\_energy\\_lending\\_criteria\\_en.pdf](http://www.eib.org/attachments/strategies/eib_energy_lending_criteria_en.pdf)

It should be considered that tendering schemes add up administrative costs and increase the risks already inherent to the different technologies. Moreover they require high upfront financial resources with little guarantee of success.

For the reasons stated above, mandatory bidding processes would favour large projects and investors only. Small scale investors who are unable to face high risks and transaction and administrative costs would automatically be excluded. Additionally, tendering schemes would represent a barrier to new market entrants, especially in countries where RES are currently underdeveloped.

AEBIOM believes that a bidding process is not always the most cost-effective tool and that the choice of a support needs to be tailor-made and left up to Member States's discretion. Therefore we suggest deleting para 120 a).

(120) (b) All generators producing electricity from renewable energy sources can bid for the aid on a non-discriminatory basis.

If needed to ensure a certain mix of electricity produced from renewable sources, Member States may require a minimum number of different renewable energy sources to receive support without pre-defining those technologies. Member States may also exclude electricity from specific renewable sources in certain geographical areas if necessary to secure grid stability.

In order to limit the effects on the raw material markets, Member States may exclude or limit energy production using biomass from the bidding process. No other operating aid may be granted to new installations producing electricity from biomass which are excluded under this provision.

The para (120) subparagraph (b) introduce a notion of technology-neutrality while indicating that Member States may require a minimum number of different RES (solar, wind, ocean, etc) to receive support but without pre-defining technologies (e.g. PV or CSP, on-shore or off-shore wind, tidal or waves, etc).

From a legal perspective, a technology-neutral selection process is contrary to the Article 194 of the Lisbon Treaty which states that the measures to achieve the Union Policy on energy shall not affect a Member State's right to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply. It would indeed prevent Member States from supporting technologies which are not necessarily the cheapest ones. The guidelines cannot recommend to Member States to either favour or exclude certain types of technologies. In particular in countries with an already high share of RES electricity, the priority is to secure a continuous expansion of renewables which requires technological choices.

From an economical perspective, this approach would lead to over-compensation. While only the currently cheapest technologies would get support, other technologies that could – if they were developed – become the most cost-effective options in the future would be excluded. Alternatively, the support level would have to be quite high to allow these less mature technologies to come in, while generating windfall profits for the more mature ones. In order to avoid over-compensation, support should on the contrary be technology specific and tailor-made to segments and markets.

Finally, from a conceptual perspective, this proposal contradicts the very purpose of State Aid, which is to remove different barriers and to help less competitive technologies to develop: a technology neutral approach would simply undermine this objective by allowing only close-to-competitive technologies to be supported.

As far as the recommendation on biomass is concerned, this paragraph takes for granted that biomass would always compete with other markets. This does not correspond to the reality as it is not always the case that a competition exists. Also, this sentence considers all types of biomass equivalent within the raw materials markets. This is a very simplistic approach, which again does not correspond to the reality as there are many sorts of biomass raw material, each having its own market characteristics.

Moreover, this provision is going against the Lisbon Treaty in what concerns Member State's right to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply. Therefore in practice, such provision is totally useless. Member States who have identified a problem of possible competition of uses of biomass have already taken action in the definition of their support schemes for biomass (e.g.: Flanders region in Belgium). They do not need this possibility to be set in the state aid guidelines to take action. EU policy should remain lean and non-bureaucratic, so no unnecessary recommendations or rules should be implied which would not bring additional benefit or effect on Member States policies. Finally, setting this sentence in the guidelines is discriminatory against biomass since competition also exists in other markets for other sources of energy such as fossil fuels (for eg, oil use for energy competes with its use for chemical or plastic industry).

For the above mentioned reasons, paragraph 120 b) should be deleted (idem for paragraph 129 a) and b): see below)

(120) (c) Aid is granted by way of a feed-in-premium or equivalent measures involving the direct marketing of the electricity produced.

The support mechanism in the form of feed in premium would force the small-scale generator to find a seller on the wholesale market and would – under the current market conditions – introduce further distortions. Aid in the form of feed-in-tariffs (FiT) should

therefore remain eligible under the State Aid regime for installations with a capacity below 5 MW (see comment on paragraph 123)

(120) (d) Beneficiaries are subject to standard balancing responsibilities where competitive intra-day balancing markets exist.

(120) (e) Aid is only granted until the plant has been fully depreciated according to normal accounting rules.

(120) (f) Any investment aid previously received must be deducted from the operating aid.

#### *Aid for less deployed technologies electricity from renewable sources*

(121) For less deployed technologies, operating aid will be considered compatible if it meets the conditions for deployed technologies or if each of the following conditions are met:

(121) (a) The aid per unit of energy does not exceed the difference between the total levelized costs of producing energy from the particular technology in question and the market price of the form of energy concerned. The production costs are updated regularly, at least every at least every [6 months] or each [1 GW] of installed new capacity.

(121) (b) Aid is granted by way of a feed-in-premium or equivalent measures involving the direct marketing of the electricity produced.

The current EEAG defines that aid for less deployed technologies (according to the definition set up in para 119 with which AEBIOM disagrees) should be granted through a feed-in-premium or equivalent measures involving the direct marketing of the electricity produced. Feed-in-tariffs (FiT) are only acceptable for small scale-installations, according to para 123.

According to the International Energy Agency, policy makers need to adjust their priorities as RES deployment grows, taking a dynamic approach in the three phases of deployment. FiT have proven to be very efficient and constructive in the past for emerging technologies (inception phase). Switching to feed-in premium is more appropriate during the consolidation phase, when the main challenge is the integration of large volumes of RES into the system. Imposing a feed-in-premium to less advanced technologies would ignore the necessary first step of the inception phase. There are still a number of new technologies that need this public policy instrument in the form of FiT to progress along their learning curves, otherwise the EU will miss the opportunity to develop a wide range of technologies that can increase not only its global leadership but also contribute to decrease energy import and, at the same time increase security of supply.

Moreover, the Commission has already provided guidance on how to better design support mechanisms, which should overcome the problems encountered in the past of poorly designed support schemes.

Therefore we suggest that para 121 b) is deleted

(121) (c) Beneficiaries are subject to standard balancing responsibilities where competitive intra-day balancing markets exist.

(121) (d) Investment aid is deducted from the production costs.

(121) (e) Aid is only granted until the plant has been fully depreciated according to normal accounting rules.

(122) The same conditions apply to aid to support energy from renewable sources other than electricity, with the exception of (122)(b) and (122)(c).

Para 122 concerns the aid granted to RES uses other than electricity, for example the heating and cooling (H&C) sector. This paragraph refers to paragraph 122 (b) and (c) which does not exist (clerical mistake). We understand that this should read "121 (b) and (c)" instead.

AEBIOM further understands that this paragraph would apply to every aid provided to all H&C installations (including district heating) whatever the technology, the size and the type of support.

#### *Aid for projects of first commercial scale and small installations producing electricity from renewable sources*

(123) Member States may grant aid to installations of first commercial scale and to small installations with an electricity generation capacity of less than [1] MW, except for wind energy, where a threshold of [5 MW or 3 generation units] applies, on the basis of feed-in-tariffs and respecting the conditions set out in point (122)(a), (122)(d) and (122)(e). Small installations with a common connection point to the electricity grid will be considered as one installation.

For small scale generation and on markets with a very high number of participants, auctioning procedures cannot be envisaged. Similarly, support mechanisms which would force the small-scale generator to find a seller on the wholesale market would – under the current market conditions – introduce further distortions. AEBIOM therefore welcomes the recognition in the new draft Guidelines that aid in the form of FiT remains possible for installations below a certain generation capacity.

However, there is no justification why there should be a different threshold for wind energy and other renewable energy sources. The provision as it stands would mean that in practice, no biomass installations with a capacity between 1 and 5 MW would be able to receive support as these are unable to find a seller on the wholesale market under the feed in premium system and to face high risks and transaction costs related to the bidding process. For these reasons, AEBIOM suggests the threshold of 5 MW to be applied to all technologies.

Finally, the consultation document obviously contains a clerical error: reference is made to point 122(a), 122(d) and 122(e) (which do not exist), instead of 121(a), 121 (d) and 121 (e).

## II Aid granted by way of certificates

(127) Member States may grant support for renewable energy sources by using market mechanisms such as green certificates. These market mechanisms allow all renewable energy producers to benefit indirectly from guaranteed demand for their energy, at a price above the market price for conventional power. The price of these green certificates is not fixed in advance, but depends on market supply and demand.

(128) The Commission will consider this aid compatible if Member States can provide sufficient evidence that such support (i) is essential to ensure the viability of the renewable energy sources concerned, (ii) does not for the scheme in the aggregate result in overcompensation over time and across technologies or for individual less deployed technologies in so far as banding is introduced and (iii) does not dissuade renewable energy producers from becoming more competitive.

(129) The Commission considers in particular that for deployed technologies no different levels of support through green certificates may be applied and that:

(a) All generators investing in the use of renewable energy sources can receive aid in the form of green certificates on a non-discriminatory basis.

If needed to ensure a certain mix of renewable energy sources, Member States may require a minimum number of different renewable electricity sources to be used to receive support without pre-defining those technologies employed to use these resources.

(b) In order to limit the effects on the raw material markets, Member States may exclude energy production from biomass from receiving green certificates. No other operating aid may be granted to new installations producing electricity from biomass which are excluded under this provision.

Please refer to comments on para 120 (b)

(c) Beneficiaries are subject to standard balancing responsibilities where competitive intra-day balancing markets exist.

(d) Any investment aid previously received must be deducted from the operating aid.

(130) The Commission considers in particular that for less deployed technologies different levels of support through green certificates may be applied and that:

(a) For each differentiated level the scheme does not in the aggregate result in overcompensation.

(b) Beneficiaries are subject to standard balancing responsibilities where competitive intra-day balancing markets exist.

(c) Any investment aid previously received aid must be deducted from the operating aid.

(131) Member States may grant aid to projects of first commercial scale and to small installations with an electricity generation capacity of less than [1] MW, except for wind energy, where a threshold of [5 MW or 3 generation units] applies, under the condition that the aid does not exceed the difference between the cost of producing energy from renewable sources and the market price of the form of energy concerned. Small installations with a common connection point to the electricity grid will be considered as one installation.

#### Additional comment on chapter 7 "Applicability of the Environmental and Energy Aid Guidelines"

##### Paragraph 228, 230: applicability of the guidelines to existing support schemes

AEBIOM welcomes the confirmation that aid granted to a beneficiary under a scheme previously agreed by a Member State will not be put into question, as stated in para (228). This provision is crucial to secure existing investments. It also echoes the recently published guidance on the design of national renewable energy support schemes, which highlights the need to "avoid changes that alter the return on investments already made and undermine investors' legitimate expectations".

Regarding paragraph 230 on the adaptation of existing RES support schemes, the footnote 100 clarifies that existing RES schemes which are not changed can remain in place even after the entry into force of these new Guidelines.

However, it indicates that "a change means any adjustment to an existing scheme other than the publication of new support tariffs according to an already existing and approved methodology". This approach is too restrictive as it could lead to a situation where a

Member State does not introduce a necessary change to a given scheme (other than the support level) in order to avoid being obliged to switch to another, less relevant support mechanism.

AEBIOM considers that Member States should remain free to make necessary incremental changes to existing schemes other than the level of support. The Guidelines should only apply to new schemes once a Member State has decided to switch from a given type of support scheme (FIT) to another type (Feed-in-premium or certificates). The footnote 100 should be adjusted accordingly.

It is our understanding from para (230) that existing RES schemes which are not changed can remain in place even after the entry into force of these new Guidelines. This understanding would be logic in order to keep investor confidence high and administrative efforts low. However, to provide the necessary security, we invite the European Commission to make this point clearer.

The wording of the consultation document would also require some clarification in case an existing scheme is changed: it seems to us that if an amended scheme is notified to the Commission between July 2014 and July 2015 (say, for example January 2015), the new scheme will only be put into effect in January 2016.

For example, in para 230, it is suggested that Member States introducing a change in their support scheme within one year of the publication of the Guidelines, need to adapt their scheme within one year after “their” publication. Reading this literally, with the “their” referring to the Guidelines would make no sense as then it would be no exemption for operation aid schemes for renewables, as the rest of the sentence seems to suggest, compared to the normal rule that all State aid schemes addressed in the Guidelines need to be adapted within one year after their publication – thus a mistake in logic. So AEBIOM understands the “their” rather as a mistake in wording, and the Commission to mean that Member States changing their system within one year after the Guidelines are adopted have to adapt within one year after the change only.

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