
To: DG Comp
From: RECS International
Subject: Consultation paper on state aid

EUROPEAN COMMISSION CONSULTATION PAPER ON STATE AID FOR ENVIRONMENTAL PROTECTION



RECS International Response

The following provides RECS International's comments to the questions raised by the Commission in relation to state aid, as they related to energy from renewable sources.

RECS International would, however, like to draw the Commission's attention to the broader issue that support for renewable energy comprises a number of measures which are often not classified as state aid. Whilst there is often a great deal of similarity among these measures in different EU Member States, the lines of state aid relevance are in effect often (artificially) delineated by the question whether a private or a state entity administers the scheme.

RECS International would therefore like to encourage the Commission to take as part of this review a more holistic view on the justification of comparable support measures even if by virtue of their structure are not strictly state aid, but are tantamount to it.

Overall, aid measures that incentivise efficient, higher generation of energy from renewable sources should be justified, provided that:

- they do not stifle or suppress the development of voluntary customer demand in renewable energy products; and
- they aim at achieving an increasing compatibility with principles of free movement of energy in the internal market, notably by encouraging fungibility of renewable energy certificates or cross-border access to renewable energy support schemes.

1. GENERAL QUESTIONS ON ENVIRONMENTAL PROTECTION 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.**
- 1.2 Have any changes in environmental support policy been announced or envisaged for the near future such as phasing out existing measures and/or introducing new support measures? If so, what is the reason for making such changes?**

RECS International regularly monitors the development of renewable energy support schemes across the Member States.

In this context, the introduction of the 2008 Guidelines did not appear on balance to have had a clearly identifiable impact.

We believe this is the case because the Guidelines continued to leave a significant degree of discretion in assessing the justification on environmental grounds of support schemes for renewable energy production. Also, the majority of the support schemes in the Members do not technically qualify as state aid, or have only elements that are affected by the state aid rules.

Overall, a decline in small scale aid measures, notably grants, for incentivising the installation onsite renewable energy production, is visible. These measures do more commonly fall into the category of state aid across EU Member States compared to the operating aid of the national support schemes for the generation of electricity from renewable energy sources.

We do, however, not think that the reduced availability of such measures is due to the changes the 2008 Guidelines introduced. Rather, we believe this is due to the reduced availability of state funding in this area. In some cases, earlier aid measures had created the desired demand effects to support of national or regional production of materials and machinery, and have thus been phased out.

As regards the national support schemes for the generation of electricity from renewable energy sources (with the purpose of feeding this electricity in for common consumption), it is notable that support instruments continue to evolve.

These support schemes are generally classified as operating support and comprise feed-in-tariff type schemes or certificate type schemes. As a measure of support, the feed-in-tariff requires a system operator or another dedicated entity to purchase electricity for a specified time at a specified price. Certificate schemes require electricity suppliers or customers to demonstrate through certificates that a particular quota their energy has been purchased from renewable energy producers, to obtain a tax relief or to avoid a penalty. Whilst the latter scheme is in principle designed to utilise competitive and cross-border trade elements, to support national generation these elements are commonly suppressed, i.e. by not allowing fungibility of certificates from other Member States or by setting artificially high targets to keep monetary support high through a supply side surplus.

There continues to be little coordination of these schemes between Member States. Since the introduction of the 2008 Guidelines, some Member States have switched between these options or have introduced both options for different forms of generation. For example, the Netherlands are switching to a certificate based system. Germany has introduced a certificate scheme akin direct marketing option for electricity that usually is compensated through a feed-in-tariff. The UK and Italy are moving, at least in respect of smaller scale generation, from certificate based schemes to feed-in-schemes.

In addition, in the case of Spain and Italy more recently, support measures have been stopped or reduced to national renewable energy generation only.

In all the above cases, we do not see that the introduction of the Guidelines have triggered these changes but rather the limited availability of state funds to continue to support measures or in some cases the intension to encourage smaller scale, decentralised energy generation. The support schemes in these countries were generally also not qualified as state aid.

The notable exception to the continued trend of national focus in renewable energy support are Sweden and Norway, which recently implemented a certificate based system which applies across both countries. The Commission should closely monitor the progress of this initiative, we believe it will be a blue print reducing market distortion by harmonisation across member states. The direct marketing option in Germany is also encouraging, albeit that it still does not allow this on a cross-border trade basis.

1.3 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?

Renewable energy support schemes, some of which are state aid measures, have led to a significant increase in renewable generation. However, as most of these schemes were designed before the introduction of the EU ETS, the support measures are not always consistent with other decarbonisation measures, notably the EU ETS.

In designing the new guidelines, Member States should be obliged to consider the greater interactions between support schemes (irrespective of whether they constitute state aid), taxation of carbon emissions and exemptions based on renewable energy consumptions, and the EU ETS.

We believe that in the coming years and in the term of a new Guideline, the voluntary market in renewable energy products as well as market based mechanisms such as joint certificate schemes like in Norway or Sweden, and cross-border redemption of renewable energy to obtain exemption from CO2 based taxation will limit the need for state aid and hopefully achieve greater conversion of support schemes. The Commission should support such conversion trough appropriate obligations in the Guideline.

- 1.4 Are in your experience certain aid measures more effective in targeting specific market failures? Please explain.**
- 1.5 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.**

The long term vision of the internal electricity market should be that:

- renewable energy is produced efficiently (with market signals to those generation forms which are in the region most economically efficient and irrespective of borders); and
- environmental costs of conventional energy are efficiently internalised through the EU ETS.

We believe that this would allow renewable energy to be produced competitively compared to conventional energy generation and reduce the need for support measures, notably state aid.

At the moment, both pillars of this vision are, however, not developing adequately.

The support schemes do largely not achieve an efficiency competition between generation types of renewable energy. Nor does the restriction of support schemes to Member States' territories allow generation to be sighted at the most productive locations.

The design of the EU ETS does not currently allow for an adequate internalisation of environmental costs.

We recognise that combining the effects of both pillars and their shaping through regulation is complex, especially in the light of global competitiveness and high prices, notably for gas, for significant parts of the generation basket.

We further recognise that renewable energy policy and support scheme design also fulfil the important role of job and wealth creation in rural and sometimes deprived areas.

The recent example of Spain's renewable energy support scheme closure has however shown that especially in the current economic climate, a nationally focussed support scheme policy is at risk becoming itself a market failure. The targets of individual Member States under the Renewable Energy Directive will not be achievable unless there is greater convergence of support schemes.

We encourage the Commission to incentivise through changes to the Guideline that in a phased approach a greater compatibility and convergence of the support schemes, be they state aid or not, is achieved. A limited fungibility of renewable energy certificates across EU Member States and a limited cross-border feed-in gives signals to site renewable energy production efficiently and creates a more robust market.

1.6 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.

Feed-in-tariff schemes and certificate schemes are currently operated with the view to maximising the generation from renewable sources. They generally do not operate with particular caps or targets on generation, or as the case of certificates schemes, they are set artificially high. This is in each case to achieve a guaranteed return.

This reduces the incentives on developers and equipment providers to reduce costs. Although equipment prices have come down, there is evidence that costs for equipment are higher in the EU than in other global markets.

1.8 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.

We believe that state aid based or comparable renewable energy support schemes can coexist with cross-border trade of renewable energy

Through the flexibility mechanisms in the Renewable Energy Directive, a framework has been provided to encourage greater convergence of renewable energy support schemes.

In addition, the ECJ in the Case Preussenelektra opined and the Commission noted in its earlier state aid assessment, e.g. the UK Renewable Energy Obligation, there should only be a temporary justification for support schemes that do not allow cross-border feed in or fungibility of certificates.

The example of the combined support scheme in Sweden and Norway, as well as the eligibility of cross-border traded renewable energy for tax exemptions in the UK and Italy (now to be discontinued) have provided examples and experience that compatibility of support measures and cross-border trade is possible from an technical, operational and administrative perspective.

A coordinated action of Member States, under the flexibility mechanisms of the Renewable Energy Directive, would achieve an appropriate sharing of costs and create overall a more site efficiency oriented, robust support scheme.

1.9 Have assessments been made of the effectiveness of State aid to support environmental protection compared to other measures? If so, could you elaborate on the results? Please make available any relevant studies or reports that describe the effectiveness of EAG State aid in your country.

- 1.10 Have evaluations been carried out of State aid, with respect to both compliance with the State aid conditions by the beneficiaries and the effectiveness of State aid in achieving the policy objective? If so, did it lead to changes/improvements in the design of aid measures? Please provide copies of any documents or studies which may be relevant.**

We have provided a number of studies with our submission addressing these areas.

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.**
- 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.**

As most renewable energy support schemes do not constitute state aid, the experience with the application of the Guideline to the support scheme is limited. Whilst the degree of flexibility the Guidelines have provided in assessing aid for environmental purposes has allowed proportionate responses for aid measures of different magnitude, the Guidelines do not appear to appropriately consider the aid-on-aid /multiple aid issues.

- 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?**

Please refer to our answer under 1.5 above. The Guidelines should focus on ensuring that support measures introduce the efficiency signals by requiring a greater degree of convergence across support schemes. A limited fungibility of renewable energy certificates across EU Member States and a limited cross-border feed-in gives signals to site renewable energy production efficiently and creates a more robust market.

3. QUESTIONS ON SCOPE AND DEFINITIONS (SECTION 2 OF THE ENVIRONMENTAL AID GUIDELINES)

- 3.3 Based on your experience with designing environmental aid measures, do you consider the current scope of measures covered by the Environmental Aid Guidelines to have been appropriately framed? If not, please explain what difficulties you have encountered.**

The framing of aid measures into the traditional categories of “investment” and “operating” aid is not particularly appropriate as both feed-in-tariff based schemes and certificates based schemes combine investment and operating aid characteristics, notably if there is a long term recover of investments through project financing.

The Guidelines should refer to feed-in-tariffs, fixed premium and certificate schemes directly, irrespective of whether they constitute state aid in the strict sense.

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

4.4 In your experience, is renewable energy more supported by way of investment or operating aid? As regards operating aid, which of the three possibilities to grant operating aid is most used in your experience? In your view, are there any specific reasons?

The framing of aid measures into the traditional categories of “investment” and “operating” aid is not particularly appropriate as both feed-in-tariff based schemes and certificates based schemes combine investment and operating aid characteristics, notably if there is a long term recover of investments through project financing. Most Member States have implemented feed-in-tariff schemes.

4.6 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.

The Guidelines should facilitate the cross border exchange of renewable energy by adding the following paragraph:

“any renewable electricity, generated in the European Union, and delivered to consumers in the Member State in question should be eligible for aid, in the form of feed-in tariffs or the ability to redeem certificates, provided that the generation meets all the eligibility criteria other than those relating to the territory or jurisdiction of production.”

11. MISCELLANEOUS

11.1 Do you have any other comments on the application of the Environmental Aid Guidelines and the GBER (environmental aid measures) on issues other than those covered in the previous questions?

The majority of renewable energy support schemes do not constitute state aid.

However, as the ECJ in the Case Preussenelektra opined, as well as the Commission noted in its earlier state aid assessment, e.g. the UK Renewable Energy Obligation, there should only be a temporary justification for support schemes that do not allow cross-border feed in or fungibility of certificates. A greater convergence of renewable energy markets should be achieved, at least through a limited application of cross-border feed-in or fungibility of certificates, considering the success of the convergence between the Norwegian and the Swedish support scheme.

We believe that either where support schemes cannot be assessed under the state aid provision, the Commission should launch a project to re-assess the compatibility of such schemes with the free movement of goods provisions under the TFEU.

Through the flexibility mechanisms in the Renewable Energy Directive, a framework has been provided to encourage greater convergence of renewable energy support schemes. In this light, the earlier justification for temporary justifications of restrictions on cross-border feed-in or certificate fungibility do not appear to be hold any longer and endanger a more robust market.

If these elements cannot be considered in the Guidelines, a parallel set of guidelines should be drawn up to avoid the often artificial delineation between similar support schemes on the basis that one is operated through a state entity, whilst the other one is not.

11.3 Please indicate whether the Commission services may contact you for further details on the information submitted, if required.

Yes

