

**RECS International Comments to the Commission's Consultation on the draft Guidelines for Environmental and Energy Aid**

RECS International appreciates the opportunity to comment on the draft Guidelines for Environmental and Energy Aid for 2014-2020, dated 18 December 2013.

RECS International welcomes the efforts of the Commission to develop a new set of guidelines on the basis of:

- experience obtained from different aid schemes so far, in order to reformulate aid conditions that stimulate investment in renewable energy generation under increasingly market based and market compatible terms;
- clarity and predictability, in order to provide stability and practicability in the application of the Guidelines for the required investments; and
- looking ahead to the challenges created by increased renewable energy generation, in order to address its consequences equitably and by ensuring that aid remains a transitory mechanism to address short to medium term market failures.

In this light, RECS International wishes to provide comments with a view to helping the Commission to further shape the Guidelines into a text that is clear and practicable in its application. As an industry organisation active in the renewable energy market, RECS International focusses its comments on the sections relevant to aid in respect of renewable energy generation, and notably the interface between the internal market, free movement of electricity and the national divergence of support scheme rules.

Subject	Reference	Comment	Recommended Action
Definition of deployed technology	General	The definition of the deployed technology and less deployed technology is rather vague and given that different consequences and conditions are attached to them, this should be clarified.	Please introduce a definition for it or explain in further detail in the text.
Cooperation Mechanisms	(118)	The statement on the 'in principle openness' of support scheme to cross-border support scheme participation is appreciated. However, the text could be understood that cooperation mechanism need to be in place first before this happens, and that Member States have discretion in putting them in place.	Please consider the findings from the AG' Yves Bot it its opinion on the currently pending <i>Alands Vindkraft</i> case before the ECJ and clarify that the non-existence of a concluded cooperation mechanism does not preclude operator to participate in another support scheme cross-border.

Cooperation Mechanisms	(118)	Given the legal nature of the Guidelines, it is argued by some that they do not constitute <i>acquis communautaire</i> and therefore does not bind Contracting Parties of the Energy Community. In light of the statement of an in principle openness of support schemes, the reciprocal treatment requirement should be clarified.	Please include further wording on reciprocal treatment as regards third countries.
Cooperation Mechanisms	(18)(d)(j)	The text of the Renewable Energy Directive appears to define and propose criteria and different approaches for cooperating on cross-border renewable energy support. It does not appear to set conditions.	Please change the word "condition" into "criteria".
Avoidance of Negative Effects on Competition and Trade	(93)-(108)	The Renewable Energy Directive has supported the creation nationally closed support schemes. This has been reviewed in the currently <i>Alands Vindkraft</i> case before the ECJ and has been found incompatible with the free movement of goods principles of the TFEU and that the barriers could not be justified on environmental grounds.	Please address directly the restrictions of aid measures to generation on national territory only and clarify that such restrictions and any locational restrictions per se do not meet the conditions for authorising an aid scheme, notably where the same generation type with comparable energy resource and operational cost basis which demonstrably trades its power into another member state is restricted to participate in a scheme on the basis of its location only.
Authorisation Period and Reauthorisation	(116)	The application of the suggested maximum 10 year period for the authorisation of schemes and the reauthorisation is not entirely clear as regards projects currently undergoing investment and construction. Notably, the later the investment occurs during the authorisation period, the higher the uncertainty as regards a reauthorisation becomes, unless	Please clarify how 'grandfathering' applies in relation to projects becoming operational in the authorisation period. Please also provide further clarity on how schemes may be reassessed during the authorisation period to provide foreseeable and predictable conditions which

		investments made and projects becoming operational within the authorisation period are grandfathered.	can be factored into the investment.
Certificate Scheme	General	The existing green certificate schemes generally do not constitute state aid.	Please clarify the relevance and application of these principles with regard to schemes that are not state aid.
Feed-in Schemes	(120), (121)	Present feed-in mechanism do not in all respects meet the requirements under (120) and (121).	Please clarify whether it is the intention that these schemes are covered under section 5.7 of the Guidelines or adjust the conditions to capture existing schemes.
Deduction of Investment Aid	General	The deduction of investment aid is in the cases of operational aid of support schemes (feed-in or certificate schemes) impracticable. We would administer the determination and netting of these and how would this money be fed-back, in particular as it would lead to tax payers eventually paying for investment aid given by public authorities, for which no other tax relief to that customer is likely to be granted.	Please remove this requirement and make the availability of operating aid a criterion in the sizing of the investment aid.
Treatment as one installation	(123)	There are a number of examples where different small scale generation types belong to different operators but are using the same connection, for instance marine renewable test sites. It would be factually wrong and unreasonable to treat them as one generation installation.	Please clarify that the cumulative treatment should only relate to generating facilities of the same type and belonging to the same entity.
Condition on depreciation	General	With different national accounting standards, it is difficult to arrive from the reading of the Guidelines what 'normal' depreciation rules are.	Please define or explain on the relevant context the term 'normal' depreciation rules.
Aid for rescue and restructuring	(16)	Most of the aid granted is operating aid. It is difficult how the	Please specify how this is to

undertakings		statement that no environmental and energy aid should be awarded to them is applied in these circumstances.	be applied to operating aid.
Exclusion of storage	General	It does not appear to be the intention that hydro schemes are classified as storage systems, unless they are pump storage or similar system. The definition could also be read as applying to river run hydro generation that feature a dam and thus arguable store some energy.	Please delineate more clearly in respect to river run hydro where water is de facto stored by a dam.