



Comments on State Aid Draft Guidelines

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Introduction

Please accept this feedback on the EU's State Aid Consultation from the Partnership for Policy Integrity, a US-based NGO with staff in the EU and working with allies across Europe and the world for the protection and restoration of natural forests.

The main point we wish to make in these comments, and as we have previously commented,¹ is that granting state aid to burning forest biomass for the generation of renewable energy is inconsistent with a number of underpinning provisions and requirements for receipt of state aid. Most fundamentally, as has been repeatedly pointed out by the EC's own scientists, including at the Joint Research Centre, burning forest biomass increases GHG emissions compared to fossil fuels for decades to centuries, and also degrades forest ecosystem function and biodiversity.² This is inconsistent with the intention of state aid to incentivize activities that are beneficial to the environment. Adding to the injury, burning biomass for energy is also the largest source of particulate pollution in the EU, making it a key threat to human health.³

The draft guideline document discusses the conditions that should be met to make state aid able to overcome the general prohibition on state aid set out in the Treaty of the Functioning of the EU. It is important to note however that use of forest biomass for renewable energy actually already violates nearly every provision of *another* Article in the TFEU, Article 191, which governs EU policy on the Environment. These provisions being:

Policy to contribute to

1. Preserving, protecting and improving the quality of the environment
2. Prudent and rational utilization of natural resources
3. Promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change.

Policy on environment should

4. Aim at high level of protection
5. Be based on the Precautionary Principle

¹ <https://www.pfpi.net/wp-content/uploads/2021/08/PFPI-comments-on-state-aid-consultation-January-7-2021.pdf>

² Overview on forest biomass impacts at <https://forestdefenders.eu/simple-simple-simple-two-changes-that-would-fix-the-eus-dependence-on-burning-trees-for-renewable-energy/>

³ See salient facts on biomass and air pollution at <https://forestdefenders.eu/wp-content/uploads/2021/05/FDA-air-pollution-factsheet.pdf>

Be based on principles

6. That preventive action should be taken
7. That polluter should pay

EU policy to take account of

8. Available scientific and technical data
9. Environmental conditions in the various regions of the Union
10. The potential benefits and costs of action or lack of action

The various ways that cutting and burning forests for renewable energy violates these principles were set out in a court case. Please see that document for the arguments,⁴ though the “polluter pays” provision is discussed in more detail below.

Fundamentally, state aid is supposed to address and rectify market failures. However, far from rectifying market failures, granting state aid to primary woody biomass (“forest” biomass) as well as secondary woody biomass actually incentivizes damaging behaviors that undermine key EU climate and biodiversity objectives of preserving and restoring forests as carbon sinks, and prioritizing biomass use for the material economy rather than for energy generation.

Accordingly, our position, and that of over 130 other NGOs that have supported a petition⁵ on getting forest biomass out of the Renewable Energy Directive, is that due to its negative impacts not just on GHG emissions, but also forests and conventional air pollution, **burning forest wood for energy should not count toward renewable energy targets or receive any form of state aid. Burning secondary woody biomass (mill residues, post-consumer waste) should also be disqualified from receipt of state aid to the extent that material could be re-used in accordance with the principles of the waste hierarchy and the circular economy.**

There are several ways that the draft guidance can be strengthened to ensure that evaluations of state aid eligibility recognize and avoid damage from burning biomass, but most fundamentally, **the process and framework for evaluating projects needs to recognize that burning any biomass emits carbon dioxide, and that the “net” emissions impact over time varies depending on the feedstock.**

Provision 98

Unfortunately, the evaluation process is currently rigged to ensure that biomass emissions are not counted. For example, at provision 98, the document recommends that member states use a consistent methodology for determining emissions reductions from projects receiving state aid, and recommends using a methodology for calculation of GHG emission avoidance posted at footnote 60.⁶ However, the recommended methodology states (page 4) that biogenic emissions should not be counted:

⁴ See <http://eubiomasscase.org/wp-content/uploads/2019/08/EU-Biomass-Case-Main-Arguments.pdf>, starting at page 39.

⁵ <https://you.wemove.eu/campaigns/the-eu-must-protect-forests-not-burn-them-for-energy>

⁶ The footnote points to methodology at call-annex_c_innovfund-lsc-2020-two-stage_en.pdf

1.3.4 Emissions generally excluded Generally, the following emissions are excluded for all projects unless specified otherwise: ■ Combustion emissions for biomass, biogas, biomethane, biofuels and bioliquids, as well as emissions associated with their transport. ■ Biogenic CO₂ combustion emissions for biomass fuels. But emissions of non-CO₂ greenhouse gases (CH₄ and N₂O) from the fuel in use shall be included.

This is inconsistent with the physical reality of how burning biomass increases climate-warming emissions. Ignoring biogenic emissions is inconsistent with international GHG accounting protocols and the EU's new climate targets that include land sector carbon uptake as a means of reducing emissions. As the IPCC states, *"The combustion of biomass generates gross GHG emissions roughly equivalent to the combustion of fossil fuels. If bioenergy production is to generate a net reduction in emissions, it must do so by offsetting those emissions through increased net carbon uptake of biota and soils."*⁷

Ignoring biogenic emissions is additionally inconsistent with the EU's own policy that now recognizes land sector emissions and sequestration in counting toward emission reduction targets. Accordingly, **we recommend that the guidance be changed so that it no longer refers to the Innovation Fund document for calculating "avoided" emissions and/or that the guidance in that document be updated to reflect basic science that recognizes that burning biomass emits carbon, and that such carbon is counted as emissions under international protocols.**

Provision 99

Provision 99 in the draft guidance is relevant here, as it states that *"To deliver positive environmental effects in relation to decarbonisation, the aid must not merely displace the emissions from one sector to another and must deliver overall greenhouse gas emissions reductions."* But with regard to forest biomass, this is exactly what is happening – the aid is simply shifting emissions from the fossil sector to the land sector (assuming fossil fuels are being directly replaced with biomass, as in a coal plant that is refired with wood). As the IPCC notes, replacing fossil fuel emissions with biomass emissions does not "reduce" emissions, because biomass does not regrow instantaneously after it's cut and burned, and also because there is an opportunity cost to using land for forest biomass going forward. The opportunity cost of feedstocks for land emissions can be thought of this way: If two tonnes of biomass have the same production and consumption GHG, but one takes effectively no land to produce and one requires land (land that used to sequester carbon and now is a separate GHG source), then the impact is very different. Yet under the current accounting convention of treating all biogenic emissions as "zero," these different impacts are ignored and all treated as non-existent, **and cutting and burning a 100 year old tree is treated as having the same emissions as burning sawdust at a mill.**

Provision 76

Now that land sector carbon is included in counting toward the EU's emissions reduction targets, there can no longer be any possible excuse for disregarding biogenic emissions. Accordingly, **the state aid guidance should be revised to explicitly acknowledge the potential loss of land carbon stocks and sinks**

⁷ IPCC, 2014: Climate Change 2014: Mitigation of Climate Change. Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change (Eds Edenhofer, O., et al). Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA. Page 877 at https://www.ipcc.ch/site/assets/uploads/2018/02/ipcc_wg3_ar5_full.pdf

when biomass is burned, and state aid eligibility should be contingent on minimizing or eliminating such losses. In particular, **provision 76 should be revised to include land sector carbon impacts**, as it currently only takes into account compliance with GHG savings criteria in the RED, which by definition do not account for biogenic carbon emissions.

Provision 107

We agree with the idea behind provision 107, which seeks to avoid displacing less polluting forms of energy with bioenergy: *“To avoid undermining the objective of the measure or other Union environmental protection objectives, incentives must not be provided for the generation of energy that would displace less polluting forms of energy. For example, where cogeneration based on non-renewable sources is supported, or where biomass is supported, they must not receive incentives to generate electricity or heat at times when this would mean zero air pollution renewable energy sources would be curtailed.”*

However we are concerned that this provision seems intended to operate in real time, on a day to day basis. How is this supposed to be enforced? In fact almost by definition, bioenergy projects are always going to be displacing less polluting forms of energy, because subsidies are finite. Accordingly **we recommend removing the words “at times when” and replacing this with the word “if”** so that the sentence reads, *“they must not receive incentives to generate electricity or heat if this would mean zero air pollution renewable energy sources would be curtailed.”*

Provision 41

As stated above, burning forest biomass for “zero carbon” renewable energy violates nearly every provision of Article 191 of the TFEU. The arguments are extensive, but one deserves special attention here, because it is also mentioned in the guidance document itself – that is, the principle of “the polluter pays.” Point 41 of the draft guidance states, *“Respect for the ‘polluter pays’ principle through environmental legislation aims at ensuring that a market failure linked to negative externalities will be rectified. Therefore, State aid is not an appropriate instrument and cannot be granted insofar as the beneficiary of the aid could be held liable for the pollution under existing Union or national law.”*

First it should be noted that due to the treatment of burning forest biomass as “zero” emissions in the RED, as well as the ETS, the EU’s policy of providing state aid to biomass energy literally turns the concept of the “polluter pays” on its head. Plants burning biomass pump previously sequestered forest carbon into the atmosphere as CO₂, along with conventional air pollutants including particulate matter, dioxins, heavy metals, and dangerous volatile organic compounds. Yet instead of “paying,” these polluters are *receiving* payments, though public subsidies and other forms of support. **Under provision 41 as currently drafted, we suppose that the “beneficiary” of the aid, e.g. a biomass power plant, can not however be “held liable” for the pollution because to the extent that anyone is held liable for the liquidation of forest carbon into the atmosphere it is the member state itself where the forest biomass was cut.** This whole scheme is thoroughly corrupt, including the “get out of jail free” card here that appears to continue exempting biomass polluters from being held responsible for their emissions. **Biomass burning emissions need to be fully accounted for, and the polluter pays principle needs to be applied to the bioenergy sector.**

Provision 65

This provision is concerned with market distortions from state aid whereby inefficient, polluting technologies are the ones that benefit. It states, *“These distortive effects can be particularly important when the aid is granted to projects that provide a limited transitory benefit but lock out cleaner technologies for a longer term, including those necessary to achieve the medium-term and long-term climate targets enshrined under the European Climate Law. This can, for example, be the case for support to certain activities using fossil fuels that provide an immediate reduction of green house gas emissions, but lead to slower emissions reductions in the long term. All other things being equal, the closer the aided investment is in time to the relevant target date, the greater the likelihood that its transitory benefits may be outweighed by the possible disincentives for cleaner technologies. The Commission will therefore take into account these possible short and long term negative effects on competition and trade in its assessment.”*

It should be noted that this entire paragraph is highly appropriate to burning biomass for energy, which as the EC’s own scientists have noted, increases GHG emissions compared to fossil fuels for decades to centuries.⁸ **We suggest refining the language to acknowledge the net emissions from biomass, the long-term net impacts of such emissions, and the danger of locking in long-lived forest burning projects when the greatest need is to restore forests to store more carbon.**

Provision 70

We are glad to see that the guidelines propose weighing positive and negative effects, but do not see any explicit commitment to evaluating biodiversity and ecosystem degradation effects for energy projects.⁹ In fact the word “biodiversity” is only really utilized in reference to state aid projects concerned with ecosystem restoration. **The Joint Research Centre’s report on biomass¹⁰ includes extensive evidence on how biomass harvesting is damaging to forest ecosystem function and biodiversity. These impacts should be acknowledged and included as factors in evaluating energy projects.**

⁸ See <https://forestdefenders.eu/simple-simple-simple-two-changes-that-would-fix-the-eus-dependence-on-burning-trees-for-renewable-energy/>

⁹ Section 4.6 Aid for the remediation of contaminated sites, for the rehabilitation of natural habitats and ecosystems and for biodiversity and nature-based solutions.

¹⁰ Overview at https://forestdefenders.eu/wp-content/uploads/2021/03/JRC-study-biomass-study-overview_final.pdf