



Joint Response:

Draft 'Guidelines on State aid for Climate, Environmental Protection and Energy 2022'

We are a coalition of innovative renewable sectors. The companies and institutes we represent are developing and bringing to market the next generation of geothermal, concentrated solar power, ocean, hydro, solar thermal, biomass wind and photovoltaic technologies. These technologies are critical if Europe is to deliver on its 2050 climate neutrality target, and to maintain the continent's strategic leadership in renewables.

We broadly welcome the draft Guidelines, which will bring welcome simplification to the State aid framework:

- The replacement of the 'aid intensities' system with a new 'funding gap' approach is an important means of simplifying the framework while still protecting competition.
- The renewable-specific criteria to assess key principles¹ is welcome and is generally fit-for-purpose.
- The preservation of tech-specific auctions will be key to developing new sources of renewable energy and ensuring a more efficient and coordinated system with lower overall costs.

However the draft Guidelines need changes, in order to properly account for:

1. Issues related to innovative renewables and demonstration projects
2. Issues common to all renewables

1. Issues related to innovative renewables and demonstration projects

Demonstration projects should not be crowded out of the State aid process

Demonstration projects (demo projects) are bespoke and often not suited to schemes. This means that they often need to be individually notified. But demo projects are very small. Member States will be dissuaded from innovating if demo projects of several MWs must undergo the same notification process as multi-GW projects.

The Guidelines should allow notified demo projects – if accepted by the Commission as genuine demo projects – to be subject to reduced requirements. If the Commission does not consider a notified

¹ 'Necessity', 'appropriateness', 'avoidance of undue negative effects' and 'positive versus negative effect'

project to be a 'demonstration project' then that project must meet all the standard requirements of a normal renewable energy project.

This will allow the Commission to concentrate its resources on those larger projects which require more consideration. It will avoid undermining Member States' incentive to innovate via demonstration projects.

It is already extremely challenging to deploy demonstration projects. They are higher-risk and so it is more challenging to secure financing. It is much harder to deploy new technologies which do not readily fit within existing planning and legal frameworks.

New energy technologies will be critical if Europe is to decarbonise. The new Guidelines can facilitate the scale-up of these new technologies, without undermining wider competition.

Solution – 1 new Paragraph in Sec 4.1.2

'For activities, which are notified and accepted by the Commission as satisfying the definition of a 'demonstration project', the Commission will, in principle, presume:

- (i) the activities satisfy the requirements for the 'Appropriateness' and 'Necessity' principles;*
- (ii) that it is an economic activity with positive effect for society which is relevant for specific Union policies;*
- (iii) there are no undue negative effects on competition and trade and balancing*

These activities will be assessed exclusively on whether they satisfy the definition of 'demonstration project' and are in line with the criteria for the 'proportionality' and 'incentive effect' principles'

The requirement to undertake a public consultation need not apply to demonstration projects

Section 4.1.3.4 requires a public consultation on competition impacts prior to notification of renewable energy projects.

Demonstration projects are very small and will never have more than a negligible impact on competition. If the Commission accepts a notified project as being a demonstration project, then there should be no need to undertake a public consultation.

It is already extremely challenging to deploy demonstration projects. They are higher-risk and so it is more challenging to secure financing. It is much harder to deploy new technologies which do not readily fit within existing planning and legal frameworks. Any extra regulatory requirements should be avoided, unless they have a clear and relevant rationale.

Solution – Paragraph 86

'No public consultation is required for measures falling under point 85(b) where the aid is notified and accepted by the Commission as supporting a demonstration project or where competitive bidding processes are used and the measure does not support investments in fossil-fuel based energy generation or industrial production '

The new Guidelines unnecessarily increase the risk facing demonstration projects

The 2014-2020 Guidelines exempt demonstration projects from:

- the requirement that aid be a premium on wholesale prices;
- standard balancing responsibilities; and
- the requirement that there be no incentive to generate during negative prices.

This was not preserved in the new Guidelines.

It is already extremely challenging to deploy demonstration projects. They are higher-risk and so it is more challenging to secure financing. In practice, additional regulatory risk will translate into a great cost for the public – either via grants or via the higher return than private investors will require to participate in the project.

In line with the [Innovation Principle](#), the new Guidelines should avoid imposing additional risks on demonstration projects.

Solution – New Paragraph in Section 4.1.4

‘The conditions established in Paragraph 104 do not apply to aid for projects which the Commission has accepted are demonstration projects’

Aid for Open Data

The CEEAG must support the Commission’s [Open Data agenda](#), i.e. support the sharing of high-quality raw data relating to activities in the scope of CEEAG. Knowledge- (including data-) sharing is a positive externality: it allows companies to learn from others’ experiences.

Companies may be reluctant to share data. Data may first be shared in private groups on reciprocal terms and only later companies may choose to make data available to large groups or the public.

In the absence of a marketplace for datasets, the value of a particular dataset is difficult to determine. Support must take consideration of the publicness of the shared data and how unfamiliar a sector is with sharing (if the community sees the value and does it readily, the need to stimulate sharing with State aid is reduced). No aid should be given to comply with data sharing obligations that are already part of an aid package to a company.

Solution – new paragraph 104a

Aid may be granted to companies for the sharing of high-quality data that they own the rights to relating to the operation of a renewable energy plant. Details on the dataset and on the company’s intention of the way it will share it will be communicated on a Member State’s official public website. The public and a group of independent experts will give their opinion of a reward that should be paid to the company to compensate it for sharing it in the manner specified. The Member State will decide the reward based on this input. The Commission will be consulted. The reward, approved by the Member State and Commission, is allowable aid.

2. Issues common to all renewables

Public consultations should be evidence-based and focused exclusively on competition-related issues

Section 4.1.3.4 requires a public consultation for renewable energy projects requesting annual aid > €150m covering six points listed under Paragraph 85 (a). Renewable projects already must undergo significant due process and consultation prior to deployment. This requirement risks slowing down the deployment of renewables, by allowing opponents an additional channel to block and delay projects.

To avoid this the Guidelines should make clear that the consultation is exclusively focused on competition issues and is to gather evidence – and primarily quantitative evidence – on competition impacts.

Subjective and unsubstantiated views should not receive undue weight. Submissions advocating a certain approach should be assessed on the quality of their evidence, not on the number of submissions received. Feedback concerning non-competition related issues should be disregarded. Member States should be free to integrate the questions into existing consultation processes.

Solution – 2 new Paragraphs in Sec 4.1.3.4

‘Member States are required only to address submissions which are directly related to competition issues. Member State responses should focus on material arguments which are substantiated by evidence. The volume of supportive or opposed responses is secondary to the weight of evidence and persuasiveness of the concerns raised’

‘Member States may undertake a dedicated public consultation exercise, or integrate the criteria of Paragraph 85 (a) or (b) into a wider consultation exercise, so long as this exercise meets the requirements of Section 4.1.3.4’

Guidelines should not introduce ill-defined requirements which will increase regulatory uncertainty

Paragraph 107 prohibits aid for energy that would displace ‘less polluting’ energy. This is an excellent principle, but it must be carefully enacted. There is no definition of ‘less polluting’ in the Guidelines. Since there are multiple forms of pollution (air, water, visual, noise ...) it is not clear how different technologies should be ranked.

The requirement for public consultation in Section 4.1.3.4 is likely to attract inputs from those who are concerned with local environmental impacts of renewable projects – be they real or perceived. Serial opponents of renewable projects will readily exploit this ambiguity in the Guidelines. In the absence of further clarity, Member States will struggle to establish that they have not displaced ‘less polluting’ energy. This adds unnecessary regulatory risk.

The Guidelines should focus on a distinction between ‘renewables’ or ‘non-renewable’ energy. If the original Paragraph 107 is maintained, then the Guidelines require an Annex with a clear hierarchy of ‘less polluting’ technologies. Alternatively ‘less polluting’ could be replaced with a reference to ‘less carbon intensive’.

Solution – Paragraph 107

To avoid undermining the objective of the measure or other Union environmental protection objectives, incentives must not be provided for the generation of **non-renewable** energy that ~~would displace renewable 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 if this would mean zero air pollution~~ renewable energy sources would be curtailed.

Guidelines should be clear that there is no question of retroactive changes to renewable energy support

Paragraphs 53 and 84 refer to possible ex-ante claw-back mechanisms and revisions of support in situations where future financial developments are unclear and in light of market and technology developments.

It should be made unambiguously clear that these paragraphs do not foresee retroactive changes in support that has already been granted. In principle, any retroactive changes within the EU law, altering the functioning of the renewable energy sector are detrimental to legal certainty and decrease predictability for investors.

The 2018 Renewables Directive states that *“policies supporting renewable energy should be predictable and stable and should avoid frequent or retroactive changes. Policy unpredictability and instability have a direct impact on capital financing costs, on the costs of project development and therefore on the overall cost of deploying renewable energy in the Union. Member States should prevent the revision of any support granted to renewable energy projects from having a negative impact on their economic viability.”*

Paragraph 84 should link to the Energy Union, and the monitoring undertaken within it concerning technological progress.

Solution – Paragraph 53

*‘Where a competitive bidding process is not used and future developments in costs and revenues are surrounded by a high degree of uncertainty and there is a strong asymmetry of information, the Member State may be required to introduce compensation models that are not entirely ex ante. Instead, these models are a mix of ex ante and ex post or introduce ex post claw-back or cost monitoring mechanisms, while keeping incentives for the beneficiaries to minimise their costs and develop their business in an efficient manner over time. **The terms of any ex post claw-back mechanism – including the sums to be clawed back and the circumstances in which this would occur – should be clearly established and communicated before the award of the aid.***

Solution – Paragraph 84

*‘Member States should keep eligibility rules and any rules related thereto under review to ensure that reasons provided to justify a more limited eligibility continue to apply for the lifetime of each scheme, that is to say, to ensure that any limitations on eligibility can still be justified when new technologies or approaches are developed or more data becomes available. **Once the Commission agrees on the admissibility of an aid or an aid scheme, the scheme will not be modified to the detriment of the beneficiary. Information from Member States on technology progress will be***

included in reporting on the fifth dimension (R&I) of Energy Union in the annual State of the Energy Union, which will be the basis for the Commission to take a view on a technology's maturity and its innovative quality.

The Guidelines must cater for pre-project development work which are standard in renewable energy projects.

Paragraphs 28 and 30 indicate that the 'incentive effect' principle will be in doubt, if work takes place prior to a written aid application by the beneficiary to national authorities.

However, it is normal for project development activities to take place, prior to the application for support for a renewable energy project. Examples of such activities include site surveys, environmental impact studies, Front End Engineering Design studies, or engagement with grid operator.

Often this work is a necessary pre-condition to apply for funding. For example the Commission's Innovation Fund considers progress in these activities when assessing a project's maturity.

Project developers do this work at their own risk - and are compensated via margins on successful projects. Such work is not an indication that a project would have happened in the absence of aid.

Moreover, the existing EEAG framework provides the possibility for Member States to grant operating aid for existing installations after depreciation (EEAG section 3.3.2.3). It should be guaranteed within paragraph 30 that in justified cases such installations could be granted aid to maintain their capacity for the future use in a way that avoid distortion in the energy market.

Solution - New Paragraph 30 (d)

'the activities undertaken are a pre-requirement which beneficiaries must complete before being eligible to apply for aid, or the activities are small relative to the overall costs of the overall activity – e.g. the development costs associated with renewable energy projects, such as site surveys, securing grid connection, Environmental Impacts Assessments'

The Guidelines should require a reasonable evidence base for individual projects

Paragraph 50 requires that national authorities provide reasons for the assumptions used and justification for any methodologies, when notifying aid which was not granted via a competitive process.

Many assumptions and methodologies are standard and not controversial – e.g. normal accounting practices. These need not be justified in the case where individual projects are being notified.

Solution – edit Paragraph 50:

*'provide reasons for any assumptions used for each aspect of the quantification, **where they differ from standard assumptions** and explain and justify any methodologies used **where such methodologies diverge from standard accounting practises**'*

'To determine the funding gap in such cases, the Member State must submit a quantification, for the factual scenario and a credible counterfactual scenario, of all main costs and revenues, the estimated weighted average cost of capital (WACC) of the

beneficiaries to discount future cash flows, as well as the net present value (NPV) for the factual and counterfactual scenarios, over the project lifetime. *When notifying schemes, the Member State must provide reasons for the assumptions used for each aspect of the quantification, and explain and justify any methodologies applied. When notifying individual projects, the Member State must provide reasons for the assumptions used, where these differ from standard assumptions, and explain and justify any methodologies applied, where such methodologies diverge from standard accounting practises.*

Guidelines should not preclude the successful feed-in tariff approaches

Paragraph 104 requires that renewable support exposes beneficiaries to price variation and market risk. It should be clear that this does not preclude the use of the successful ‘contracts for difference’ model, which has delivered large renewable deployments and cost reductions in recent years.

The Commission is itself proposing a ‘Carbon Contracts for Difference’ tool. In addition a recent Commission Decision found that a Contracts for Difference framework is compatible with the requirement that premiums are in addition to the market price.² This phrasing should be used in the new Guidelines.

Solution – 2 new Paragraphs in Sec 4.1.3.4

‘The aid must be designed to prevent any undue distortion to the efficient functioning of markets and, in particular, preserve efficient operating incentives and price signals. For instance, beneficiaries should ~~remain exposed to price variation and market risk~~, receive support in the form of a premium on top of the market price, unless this undermines the attainment of the objective of the aid. Contracts for difference will constitute an acceptable form of aid for innovative technology.’

The Guidelines should not require a disproportionate amount of paperwork

Paragraph 98 and paragraph 85 (a) (ii)) request a detailed calculation of the CO2 equivalent emissions saved by a renewable energy technology. Similar calculations are required for the ETS Innovation Fund applications. They are non-trivial. Requiring such calculations is disproportionate because savings of CO2 equivalent emissions will often be only one criterion influencing an award of State aid – as listed in Paragraph 83 (a) to (f).

Solution – Amend paragraph 98 as follows

~~The subsidy per tonne of CO2 equivalent emissions avoided~~ Where aid will be awarded solely on the basis of subsidy per tonne of CO2 equivalent emissions avoided, this quantity must be estimated for each beneficiary or reference project, and the assumptions and methodology for that calculation provided. To the extent possible, this should seek to identify the net emissions reduction from the activity, taking into account life-cycle emissions created or reduced. To enable a comparison between the costs of different environmental protection measures, the methodology should usually be similar for all measures promoted by a Member State.

² [‘State Aid SA.56831 \(2021/N\) – Denmark Multi-technology RES tenders 2021-2024’](#) European Commission, May 2021, Paragraph 94

Paragraph 99 is also likely to place too much administrative burden on beneficiaries. It calls for proof that aid delivers overall greenhouse gas emissions reductions. In order to reduce this burden on beneficiaries and at the same time to ensure that this assessment is done impartially, this should be done upstream of the project developer by the Member State authorities, either directly or via an agency in charge of this.

Solution – Amend paragraph 99 as follows

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. Short and long term interactions with any other relevant policies or measures, including the Union's ETS, should be considered. It is the responsibility of Member States to propose aid schemes compatible with these aims, including the calculation of reduction of greenhouse gas emissions by each project.

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European Solar Thermal Electricity Association (Estela)

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European Geothermal Energy Council (EGEC)

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