

CEEAG response Tom Baur, 30 July 2021
Business developer Blue Energy (Belgium)

The draft Guidelines for renewable energy generation are reasonable, but lack certain important matters that need urgent attention.

1. **Emerging renewables like wave and tidal energy (ocean energy) are currently far too small to impact competition.** Typical ocean energy demonstration projects will be circa 10MW on average. Requiring such projects to undergo the same process as GW-scale mature technology projects creates a strong disincentive to Member States to undertake these projects. Streamlining the definition of 'demonstration projects' will allow the Guidelines to work for both emerging and mature renewables.
2. **The application of state aid rules to ocean energy test facilities is unreasonably rigid in an setting where there is a very small (to non-existent) competition impact.** To accelerate innovation and scaling-up in ocean energy, test facilities are crucial. A more lenient application of state aid rules is urgently needed.

Note that to meet the Commission's Offshore Strategy targets (100MW of ocean energy by 2025) it is important to take the ocean energy challenges into consideration in the draft Guidelines.

Please find below several recommendations.

A. Ocean energy test facilities should be exempted from State Aid rules (or a lenient set of rules)

Due to high investment and operating costs of an ocean energy test facility, as well as the stressed financial capacity of testing innovators, there is very little (to non-existent) commercial uptake to build and exploit such test facilities in many Member States (besides globally a very few exceptions in very specific circumstances). But to accelerate innovation and scaling-up in ocean energy, test facilities are crucial. A more lenient application of state aid rules is urgently needed.

Operating under any of the available state aid frameworks makes it very challenging to operate. Current state aid frameworks contains rigid rules to classify for non-economic v.v. economic activities; with limited scope for state aid share; and unrealistic criteria for cost-covering and market conformity.

One channel to elevate (or better to get exemption from) state aid rules is to expand the exciting SGEI definition as defined in *SWD(2013) 53 final/2, COMMISSION STAFF WORKING DOCUMENT, Guide to the application of the European Union rules on state aid, public procurement and the internal market to services of general economic interest, and in particular to social services of general interest, Brussels, 29.4.2013.*

Solution -

Expand the definition of Social services of general interest (SGEI) such that the benefits of ocean energy test facilities with the specific goal to accelerate innovation and scaling up of ocean energy solutions, classify as SGEI within the new (expanded) definition.

B. Demo projects should not be crowded out of the State Aid process

Demo projects are bespoke and often not suited to schemes. This means that they often need to be individually notified. But demo projects are by their nature very small.

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 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 and bring new technologies to market.

It is already extremely challenging to deploy demo 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 on whether they satisfy the definition of ‘demonstration project’ and are in line with the criteria for the ‘proportionality’ and ‘incentive effect’ principles’

C. The requirement to undertake a public consultation need not apply to demo projects

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

Demo 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 demo project, then there should be no need to undertake a public consultation.

It is already extremely challenging to deploy demo projects. They are higher-risk and so it is more difficult 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’

D. The new Guidelines unnecessarily increase the risk facing demo projects

The 2014-2020 Guidelines exempt demo 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 demo projects. They are higher-risk and so it is more difficult 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 demo 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’

E. 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 before 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’

F. 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 prior work in these activities when assessing a project's maturity.

Project developer 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.

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'