**Wetlands International European Association’s feedback to the Public Consultation for the Revision of the Guidelines on State aid for Environmental protection and Energy 2014-2020 (EEAG)**

**6th of January 2021**

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| **Key asks:**   1. We ask the Commission to use the opportunity of the EEAG consultation to take measures to prevent environmentally harmful subsidies. 2. There is no clear provision by which State aid for illegally permitted projects is systematically halted or prevented, and this needs to be changed in the new EEAG. 3. The EEAG needs to clearly stipulate, that no incentives for hydropower may be provided in countries which have not achieved the goals of the WFD, even for very small plants. 4. The EEAG needs to clearly state that any energy/environment projects or sectors subject to EC infringement procedures, ongoing investigations that may lead to infringement procedures, or national level court cases related to the environmental and nature Directives may not receive incentive payments until the issue is resolved. 5. As well as environmental acquis, it is important for State aid to be granted only to projects complying also with other EU rules, such as on procurement. 6. There should be no threshold for feed-in tariff schemes for hydropower plants, as it has been proven that providing feed-in tariffs incentivizes overdevelopment of small plants, with high cumulative environmental impacts and a low contribution to electricity generation. |

The fitness check did not fully capture all the issues at stake, particularly with regard to ensuring that the provisions on compliance with EU environmental legislation are fulfilled. In our opinion, the following improvements are needed:

**Coherence with EU environmental and procurement legislation**

Paragraphs (7) and (117) of the EEAG require compliance with EU environmental legislation:

*“(7) To avoid that State aid measures lead to environmental harm, in particular Member States must also ensure compliance with Union environmental legislation and carry out an environmental impact assessment when it is required by Union law and ensure all relevant permits.”*

*“(117) With regard to aid for the production of hydropower, its impact can be twofold: on the one hand, such aid has a positive impact in terms of low GHG emissions, on the other hand, it might also have a negative impact on water systems and biodiversity. Therefore, when granting aid for the production of hydropower, Member States must respect Directive 2000/60/EC (61) and in particular Article 4(7) thereof, which lays down criteria in relation to allowing new modifications of bodies of water.”*

However the implementation of these provisions is not adequate in reality. While the EU’s environmental acquis is in any case binding for energy projects, support schemes still award support for projects which contravene the acquis. This particularly applies to hydropower. For example, the [EC in 2015 opened a case against Romania for failure to apply the environmental acquis to small hydropower plants](https://wwf.panda.org/wwf_news/?248033/EC-starts-an-infringement-procedure-against-Romania-on-small-hydropower), but there is no mechanism in place to ensure that the affected plants no longer receive incentives. The recent [EC letter of formal notice to Croatia on inadequate application of the Habitats Directive in the case of wind farms](https://ec.europa.eu/commission/presscorner/detail/en/inf_20_859) shows that this also applies to other renewables.

**There is no clear provision by which State aid for illegally permitted projects is systematically halted or prevented, and this needs to be changed in the new EEAG.**

In reality, the exemptions in Art. 4 of the Water Framework Directive (WFD) are over-applied and endanger the achievement of the Directive’s goals. As the EC’s 5th WFD implementation report (COM(2019) 95 final) put it in February 2019:

*“The exemptions foreseen in Article 4 of the WFD currently cover around half of Europe’s water bodies. This mainly concerns natural water bodies, but increasingly also heavily modified and artificial water bodies, next to new physical modifications. Whilst the justifications for such exemptions have overall improved, their persistent wide use is an indicator of the significant efforts still needed to achieve good status or potential by 2027.*”

DG COMP’s State aid decisions for incentive schemes do not demonstrate deep analysis of whether countries properly apply eg. Article 4(7). It appears to mainly rely on pledges from the countries themselves. While incentives for hydropower have declined in many EU Member States, they are still encouraging overdevelopment of small hydropower plants in some countries, particularly Italy, and also in the EU accession countries. This issue is seriously affecting public acceptance of renewable energy per se and is leading to degradation of riparian habitats and species in hundreds of kilometers of river stretches.[[1]](#footnote-1)

Just as Art. 3 of the RED rightly states that *“Member States shall grant no support for renewable energy produced from the incineration of waste if the separate collection obligations laid down in that Directive have not been complied with*”, **the EEAG also needs to clearly stipulate, that no incentives for hydropower may be provided in countries which have not achieved the goals of the WFD, even for very small plants.**

Likewise, in order to ensure joined-up legislation, and to make sure that renewable energy projects developed in breach of the EIA, Birds or Habitats Directives, do not receive incentives**, the EEAG needs to clearly state that any energy/environment projects or sectors subject to EC infringement procedures, ongoing investigations that may lead to infringement procedures, or national level court cases related to the above Directives may not receive incentive payments until the issue is resolved.**

**As well as environmental acquis, it is important for State aid to be granted only to projects complying also with other EU rules, such as on procurement**. [In 2019 the European Commission called on eight Member States to comply with EU concessions law regarding hydropower](https://ec.europa.eu/commission/presscorner/detail/en/IP_19_1477). Given the potential for lack of transparency in the award of concessions to lead to nepotism or corruption, projects whose concessions were awarded through non-compliant processes should not be allowed to be granted State aid.

**Thresholds for renewable energy auctions and feed-in tariffs**

The current exceptions to the requirements to carry out auctions for renewable energy operating aid are not sufficient to allow the development of energy communities. Although the Clean Energy for all Europeans Package recognizes the environmental, economic and social benefits of energy communities, the current State aid rules limit their access to support schemes, as some of these projects are larger than the 500 kW general threshold.

Auctions are difficult for energy communities to participate effectively in, because the auction criteria are often based on cost, which is not something energy communities can usually compete on. The costs, administration, and timelines for decision-making may also prevent energy communities from participation. **The EEAG therefore needs to consider whether to raise the threshold for exempting energy communities from auctions, or to stipulate a specific regime** for renewable energy communities such as reserving specific capacity available in auctions for them.

On the other hand, the 500 kW threshold may be too high for hydropower plants, as it has been proven in practice that providing feed-in tariffs incentivizes overdevelopment of small plants, with high cumulative environmental impacts, a low contribution to electricity generation, and without the adequate application of the environmental acquis.[[2]](#footnote-2) An example of a very small plant causing damage in a Natura 2000 area is the [Dabrova Dolina hydropower plant](https://bankwatch.org/project/dabrova-dolina-hydropower-plant-croatia) in Croatia, with an installed capacity of only 250 kW. **The current capacity threshold for feed-in tariffs (and auctions) may be retained for some technologies but it is not suitable for hydropower.** **Therefore, there should be no threshold for feed-in tariff schemes for hydropower plants.**

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Wetlands International – European Association is an Association of 10 NGOs from 6 European countries, working together to raise awareness about wetland ecosystems and to advocate the sustainable use of wetlands for people and nature. More information on: <http://europe.wetlands.org>.

1. See for example these studies:

   <https://balkanrivers.net/sites/default/files/Riverwatch_Black_catalogue_PDF.pdf> (impact of small HPPs)

   <https://balkanrivers.net/sites/default/files/European%20Hydropower%20report%202019_w.pdf>

   <https://balkanrivers.net/sites/default/files/MedRiverAssessment-Full-Study.pdf>

   <https://balkanrivers.net/Threatened_Fish_MedBasin.pdf> (impact on fish species)

   <https://v2.balkanrivers.net/sites/default/files/broken-rivers.pdf> (The impact of European-financed small hydropower plants on pristine Balkan landscapes) [↑](#footnote-ref-1)
2. See <https://bankwatch.org/wp-content/uploads/2019/09/who-pays-who-profits.pdf> [↑](#footnote-ref-2)