

**Environmental and Energy Aid Guidelines 2014-2020  
(EC public consultation: 11 March 2013-30 April 2013)**

**EFET response**

The European Federation of Energy Traders (EFET)<sup>1</sup> welcomes the European Commission's Consultation Paper of 11 March 2013 presenting its suggested approach in the upcoming review of the Environmental and Energy Aid Guidelines (EEAG). This second step in the review of the State Aid Guidelines for environmental protection represents a further move in the European debate on the future of renewable energy sources (RES) in the EU and, in particular, how to integrate renewable electricity in the internal market for energy. In this regard, EFET strongly supports the proposal to expressly enlarge the ambit of the Guidelines to encompass energy, as we believe that environmental protection and energy have become more than ever entangled.

The response to this Consultation Paper should be read in connection with the EFET response to the European Commission consultation on the existing State Aid Guidelines for environmental protection submitted in October 2012<sup>2</sup>, as well as the EFET reaction to the European Commission Communication COM (2012) 271 on renewable energy of 6 June 2012<sup>3</sup>. The EFET response to the European Commission consultation on generation adequacy of February 2013<sup>4</sup> is also relevant for many aspects of this contribution.

---

<sup>1</sup> EFET is an industry association which was set up in order to improve the conditions of energy trading in Europe, mainly in electricity and gas markets. Established in 1999, EFET represents today over 100 companies in 27 European countries. EFET works to promote and facilitate European energy trading in an open, transparent market unhindered by national borders. More information at: [www.efet.org](http://www.efet.org).

<sup>2</sup> For additional details, please visit : [http://efetwebsites.2r-itservices.nl/Cms\\_Data/Contents/EFET/Folders/Documents/EnergyMarkets/RE/~contents/CEQJ8Q867XKQQ7QQ/EFET-response-to-EC-consult-State-Aid\\_23102012.pdf](http://efetwebsites.2r-itservices.nl/Cms_Data/Contents/EFET/Folders/Documents/EnergyMarkets/RE/~contents/CEQJ8Q867XKQQ7QQ/EFET-response-to-EC-consult-State-Aid_23102012.pdf)

<sup>3</sup> For additional details, please visit: [http://efetwebsites.2r-itservices.nl/Cms\\_Data/Contents/EFET/Folders/Documents/EnergyMarkets/RE/~contents/DKX2ECC799WV9FG3/EFET-reaction-EC-Comm-RES\\_15102012.pdf](http://efetwebsites.2r-itservices.nl/Cms_Data/Contents/EFET/Folders/Documents/EnergyMarkets/RE/~contents/DKX2ECC799WV9FG3/EFET-reaction-EC-Comm-RES_15102012.pdf)

<sup>4</sup>For additional details, please visit:  
[http://www.efet.org/Cms\\_Data/Contents/EFET/Folders/Documents/EnergyMarkets/ElectPosPapers/~contents/9Q32YYC4U5DF9ZFF/EFET-response-to-EC-consultation-on-generation-adequacy\\_20130207.pdf](http://www.efet.org/Cms_Data/Contents/EFET/Folders/Documents/EnergyMarkets/ElectPosPapers/~contents/9Q32YYC4U5DF9ZFF/EFET-response-to-EC-consultation-on-generation-adequacy_20130207.pdf)

EFET shares DG Competition’s assessment of the changes which have occurred in the last decade of importance to the energy sector and to the operation of electricity markets, especially with regard to:

- Climate and energy policies increasingly being intertwined
- RES share in total energy mix having increased significantly, while many RES technologies become more competitive
- RES generation having a competitive impact on the wider electricity market
- RES having an effect on network stability and patterns of generation dispatch
- Conventional generators, retail suppliers, classes of consumer and wholesale market participants bearing the costs of sustainability and security of electricity supply in diverging proportions
- The use of certain policy instruments producing counter-productive effects.

The comments set out below present the EFET reaction to a number of specific proposals laid out by the European Commission on the Consultation Paper. They reflect a general overview of the EFET position towards support mechanisms for renewable energy in Europe. It is the view of EFET that significant improvements and harmonisation efforts for these mechanisms are required. The European Commission should focus its attention on better integrating renewables into the internal market and working towards the eventual phasing out of state aids and other support mechanisms. This is one of the objectives of the European Commission, stated in the Communication COM (2012) 217 and the existing guidelines.

**(5) “The review process of the EAG is not limited to the current scope of the Guidelines, but includes a reflection to enlarge their scope to Environmental and Energy Aid Guidelines (“EEAG”) in order to encompass energy issues which have so far only partially been covered by the Guidelines and are now dealt with by State Aid Decisions directly under the Treaty”**

EFET supports the European Commission’s proposal to enlarge the ambit of the State Aid Guidelines to encompass energy. We believe it will enable DG Competition to gain a more holistic view of climate and energy policies.

As noted in our reaction to the European Commission Communication on renewable energy, we believe that a priority task should be to elaborate a clear wholesale power market design, as a next step beyond the 2014 “target model”, to incorporate RES-E

output and RES-E transactions. This should involve competitive bidding into the market in all timeframes applying to all types of generation. Any exceptions would have to be justified according to EU, not national, rules. Special treatment or financial support would need to be demonstrably market based, not distort competition and not adversely affect trade between Member States.

We believe that the Commission's June 2012 Communication statement of its belief that "moving as rapidly as possible towards schemes that expose producers to market price risk encourages technology competitiveness" is an important objective that should be carefully considered by DG Competition in its review of the Guidelines. But we would go much further and insist that RES-E producers should also start to make a contribution to competitive power market conditions. For this purpose they must take on clear responsibilities to contribute to market visibility, and transparency around transactions and asset utilisation. They should also contribute to system stability in a physical sense, by scheduling and having to balance their activities in the same way as other generators.

EFET also cautions against an approach which allows renewable investors to be totally insulated against movements in market prices. Some commentators justify this with the argument that this reduces investment costs and makes projects more "bankable". However it also transfers these risks and associated costs to consumers or taxpayers. It also removes commercial incentives from developers to participate fully in the electricity market and damages the objectives of liquidity and competition.

We therefore urge the European Commission to strengthen the existing State Aid Guidelines so that only appropriate support is granted to certain technologies that have not reached maturity yet, and to draw up a plan with a view of phasing out support in the long term. Also, we recommend that support mechanisms which are not covered in the Guidelines are subject to full investigation under the Treaty provisions.

**(27) "A key challenge in the review of the Guidelines is simplification of the rules."**

EFET generally supports the simplification of State Aid rules. But state aid rules cannot be looked at independently from the overall design of the internal market, as state aid is meant to make up for market failures. Hence, the Commission, regulators and governments need to make fundamental improvements to the elements of electricity market design which lie in their remit in order to limit the intensity and volume of state aid. EFET believes that the internal energy market will only deliver best results when the following steps have been taken:

- Integrate renewable power producers into the wholesale market.
- Develop and improve intraday markets by moving gate closure to H-1 and facilitating cross border exchanges to make the maximum use of interconnector capacity.
- Allow free price formation in wholesale markets and remove explicit and implicit wholesale price caps/ floors, so that the energy market can play a central role.
- Extend real-time metering to enable demand response.
- Remove unnecessary operational requirements and restrictions on generation companies, in particular allow free entrance but also free exit when plants are no longer profitable.
- Improve the functioning of the gas market, avoiding run-or-pay obligations and other restrictions on gas fired power plants and ensuring that power plants have flexible access to transmission networks and wholesale gas markets.
- Ensure a stable and consistent energy policy framework for decarbonisation based on the ETS.

**(30) “It is considered to add and define compatibility conditions for aid for energy infrastructure.”**

EFET believes that before trying to solve congestion by building more infrastructures, TSOs need to make sure that enough existing transmission capacity is made available to the market in the first place. For cost-benefit reasons, new investment should only be considered if TSOs can prove that existing assets have been used to their maximum extent. Most particularly, the evolution of capacity allocation rules through the Capacity Allocation and Congestion Management (CACM) network code should be used to maximise available capacity on existing assets.

The potential extension of the State Aid Guidelines to infrastructure projects, which can currently qualify for aid on a case-by-case basis under the Treaty provisions, should lead, if approved, to increased scrutiny of national energy regulators and the European Commission oversight. At the very least, as the European Commission points out, a close examination should be conducted in each case to analyse to which extent market forces by themselves, or in combination with appropriate regulatory intervention, can be expected to deliver an efficient level of electricity infrastructure without aid. In addition to the European Commission proposal that compatibility conditions for this type of aid could include criteria such as aid intensity, Internal Rate of Return (maximum) and an obligation to grant third party access ("TPA"), we believe that in the framework of a “stricter necessity test”, national energy regulators should carefully investigate justifications for reliability margins, other security parameters and allocation constraints before any aid is granted to new project. Also, in

a long term perspective, if new transmission lines are built to help connect, or facilitate the dispatch of RES-E installation which still relies on subsidy, there is a risk that those lines themselves could become stranded assets in due course. There should thus be a strict test for new transmission lines receiving state aid to assess whether they would still be needed when the connected RES-E source stops receiving financial support.

Finally, although we believe that smart grids, storage and fuel cells, and super grids could contribute to resolving infrastructure issues in the long term, they should be incentivised by the market and allowing normal variations in price.

**(22) “Where framework conditions have changed for all low-carbon energy sources, this could be reflected in the State aid rules by including all low carbon energy sources. Also, increased competition between low-carbon sources in particular RES could help to achieve EU objectives more cheaply.**

**“It is proposed that the review process explores technology neutrality to achieve decarbonisation targets in line with existing energy and climate change objectives for 2020.”**

EFET approves of the Commission's proposed exploration of technology neutrality. In general, we welcome the commitment of the European Commission in its Communication on renewable energy of June 2012 that “renewable energy should be gradually integrated into the market with reduced or no support”, as well as the clear statement on an objective of a level playing field. However, we expect the Commission should already be working towards such an objective with respect to the post-2020 strategy for RES (if not earlier in the case of RES-E). We think indeed that the agenda must be accelerated on all the elements of market integration and management of externalities that were not addressed in previous policy objectives. We would have thus liked to see in the Communication more clarity regarding how this objective might be achieved.

EFET also supports active demand-response in a non-discriminatory manner and promotes wide consumer engagement through willingness to pay for reliability and/or price stability in existing MWh market.”

**(23) “The review will explore measures for generation adequacy and system stability measures.”**

EFET welcomes the European Commission's involvement on the issue of generation adequacy and system stability, which have become increasingly topical as a result of a number of Member State projects to set up capacity remuneration mechanisms. We strongly agree with the European Commission statement that consideration should be given whether alternative and possibly less distortive measures exist which can

alleviate legitimate concerns but affect the internal market to a lesser degree. Basis for such considerations should be a cross-border assessment of generation adequacy.

While generation adequacy remains a national consideration for technical and legal reasons, it should certainly not be considered in isolation, and the contribution of neighbouring systems to the national adequacy should be taken into account. We believe that this should be done in an implicit way when considering the overall security margin, through the regional and European level assessments of available margins and therefore through the likely contribution of interconnection capacity during tight adequacy periods. Member States should not focus on national solutions but should also consider the overall regional – or possibly European – surplus of capacity over demand and the reasonable pipeline of investment plans.

Harmonisation of generation adequacy standards but also pooling of the adequacy assessment methodology could contribute to making sure that, e.g. “diverging preferences” regarding security of supply on the part of national governments do not overlook the contribution of neighbouring markets and lead to an over-assessment of generation adequacy needs. Policies implementing national preferences that interfere with the functioning of the internal electricity market should be challenged by the Commission.

In the current context where EU Member States seem to be pushing ahead with the adoption of capacity mechanisms, we would welcome an initiative of the Commission to limit ex-ante the potential deleterious effects of capacity mechanisms, and ex-post control their implementation, in order to maximise their compatibility with the EU Target Model. We believe that the European Commission should consider developing rules for coordination of capacity mechanisms, such as those proposed on interconnections, and that capacity mechanisms should remain under its scrutiny as part of the state aid and/or public service obligation monitoring processes.

Finally, as the European Commission seems to consider investments in infrastructure and demand side measures could be primary alternatives to capacity remuneration mechanisms, for which state aid support could be granted, we would like to refer to our comments to point (30) above, which highlight the need to maximise existing assets and the overall progress to be made on the Internal Energy Market prior to approving any such state aid.

**(12) “If capacity mechanisms are found to be necessary, several elements can mitigate the potentially harmful effects, in particular, the tendering of the capacity in an open, transparent and technology neutral manner. Moreover, cross-border mechanisms are usually more beneficial to the internal market than nationally oriented measures.”**

EFET agrees with the European Commission assessment. As mentioned in its statement in the consultation document of October 2012 on generation adequacy, we also share the European Commission's view that if Member States decide to establish capacity mechanisms, they should be able to show they are necessary, proportionate, and transitional in nature (or at least that their price signals revert to zero when adequacy is met). EFET has developed a series of criteria for the evaluation of capacity mechanisms. If deemed necessary, capacity mechanisms should ideally:

- demonstrably enhance adequacy and reliability;
- avoid distortion or dilution of price signals from energy (MWh) markets;
- be non-discriminatory by technology and between existing and new capacity (one MW is one MW)
- be transitory in nature, with process towards phase-out of their price signal as market functioning improves;
- focus on time periods further than four years ahead, in order to limit overlap and interference with forward and future markets in electricity;
- facilitate an active demand side in a non-discriminatory manner and promote wide consumer engagement through willingness to pay for reliability and/or price stability via the existing MWh market;
- take into account the contribution of non-national generation through interconnections (reduction of the local adequacy needs);
- minimise centralised processes and maximise the scope for voluntary management by market participants of their off-take and delivery obligations, so that market dynamics have a chance to function; should not have government/TSO as “customer”.
- use market-based remuneration mechanisms (e.g. by means of auctions, tenders, or subscription obligations);
- be suitable for EU wide / harmonised application.

**(13) “System stability and generation adequacy may also justify deviations from the principle of technology neutrality e.g. if Member States show an excessive import dependency or if the outcome contradicts other policy objectives such as sustainability.”**

EFET believes that there is fundamentally no reason in connected markets and connected systems to apply only national criteria when assessing generation adequacy.

While generation adequacy remains a national consideration for technical and legal reasons, it should certainly not be considered in isolation, and the contribution of neighbouring systems to the national adequacy should be taken into account. We believe that this should be done in an implicit way when considering the overall security margin, through the regional and European level assessments of available margins and therefore through the likely contribution of interconnection capacity during tight adequacy periods. Member States should not focus on national solutions but should also consider the overall regional – or possibly European – surplus of capacity over demand and the reasonable pipeline of investment plans.

**(25) “In order to create cost-efficient support schemes it could be explored whether the most mature RES should – possibly progressively - compete for State aid (thereby favouring the most efficient production). [...]The use of more market-based instrument such as investment grants, feed-in premiums (especially when they are digressive over time) or certificates schemes could increase the efficiency of the RES support schemes (both in terms of limiting public expenditure and in terms of preserving market price signals) and should therefore be considered.”**

EFET is aware of the European Commission objectives of supporting innovation in RES technologies on the one hand, and the difficulty to avoid windfall profits for mature/maturing RES technologies on the other hand. EFET agrees with the European Commission that tendering and auctioning mechanisms may help identify current and expected maturity of a range of technologies over a certain time horizon and can help to reduce the need for financial support.

EFET also agrees that market-based instrument such as investment grants, feed-in premiums or certificates schemes could increase the efficiency of the RES support schemes. The Commission needs a clear action plan to send the right signal to market participants, including non-RES producers (see below).

EFET’s assessment is that current policies have been successful in facilitating the ‘take off’ phase of renewable energy. However, too little consideration was given to the overall costs and efficiency of such policies, to the impact on other forms of generation which are still needed, and to network limitations (hidden externalities). As

a consequence these policies are already reaching the limits of their workability and will certainly be insufficient for the fundamental changes to the energy supply mix envisaged in the post 2020 period. In terms of a “road map” for RES-E, EFET would therefore recommend the following progression of measures:

**By 2015: Firm suggestions:**

- All renewable generation installations above a threshold of e.g. 5MW should have the same scheduling and balancing responsibilities as other generators, with a concrete incentive to sell their output directly on the wholesale market rather than to claim a special tariff.
- Any **new** RES-E support schemes notified to the Commission should include these requirements.
- A fully operational standardised GO system in all member states must be implemented as the backbone of trading on RES certificates.
- The Commission should further encourage bi- or multilateral trading schemes between Member States which also provide mutual recognition of external schemes, particularly for RES projects that may be connected to more than one EU market.
- Mature technologies should have all operating aid progressively decreased (e.g. onshore wind and solar).

**By 2020: Proposals for reflection:**

- Both **existing and new** RES-E generation should be balance responsible and responsible for selling their own output into wholesale markets and their marginal costs should include all externalities.
- The renewable attributes of non-mature RES-E technology qualifying for any remaining financial support and contributing to any remaining compulsory consumption targets must be tradable across EU borders and must be accepted for cancellation against the target applicable in the “importing” country.
- Mature technologies should have all operating aid removed

**By 2025: Proposals for reflection:**

- Another cycle of analysis and fine tuning of the market design should be made.
- All support removed for **existing and new** projects so that the internal market including both RES and non RES technology can coexist in a coherent manner. New emerging technologies requiring R&D spending could still qualify for some support if promising.

**(29)“National RES targets and other elements have led to support systems promoting almost exclusively national production. From an environmental point of view, this focus is not automatically justified and from an economic point of view, this risks creating important inefficiencies in the production and distribution of RES. Support schemes could therefore become more open to suppliers from other Member States and, in the longer term, Member States should promote common mechanisms to support cross-border support systems to encourage the deployment of RES production where it is most efficient.”**

EFET agrees that by 2020 and if prolonged after 2020, RES support schemes should allow the participation of third Member States. Increased compatibility of support schemes should be sought by Member States and supervised by the Commission.

We believe a priority task of the European Commission should be to elaborate a clear wholesale power market design, as a next step beyond the 2014 “target model”, to incorporate RES-E output and RES-E transactions. This should involve competitive bidding into the market in all timeframes applying to all types of generation. Any exceptions would have to be justified according to EU, not national, rules. Special treatment or financial support would need to be demonstrably market based, not distort competition and not adversely affect trade between Member States.

If national schemes are allowed to continue to be the main driver for renewable investment after 2020, EFET would expect a much higher level of EU supervision in terms of compatibility supported by strong guidelines. Cross border exchanges and mutual recognition of renewable energy must be a central feature of such guidelines, in order to assure the integrity of the internal market as the penetration of renewables increases.

It may be that neither a centralised EU support scheme (based around ETS and GOs), or strong EU supervision of national schemes if thought possible. In that case EFET would recommend renewable targets to be indicative rather than being mandatory targets. Mutual recognition should be possible in any case and should not be excessively burdensome.

**(24) “It may be necessary to consider how the increasing costs of rendering the energy system more sustainable and more secure are shared across the different market players. This raises the issue of competitiveness in particular for economic operators who are particularly exposed to international competition and are subject to high energy costs.”**

As noted in earlier comments, EFET cautions against an approach which allows renewable investors to be totally insulated against movements in market prices. Some commentators justify this with the argument that this reduces investment costs and makes projects more “bankable”. However it also transfers these risks and associated

costs to consumers or taxpayers. It also removes commercial incentives from developers to participate fully in the electricity market and damages the objectives of liquidity and competition.

We would insist that RES-E producers should start to make a contribution to competitive power market conditions. For this purpose they must take on clear responsibilities to contribute to market visibility, and transparency around transactions and asset utilisation. They should also contribute to system stability in a physical sense, by scheduling and having to balance their activities in the same way as other generators.

Therefore, we do not think that the European Commission proposal goes in the right direction. The price of sustainability and system security should be evenly shared by market participants.

Also, we believe that no customer, whether particularly exposed to international competition or high energy consumer, should be privileged against the costs of climate protection policies. On this matter, we refer the European Commission to the recent case law ruled by the OLG Düsseldorf<sup>5</sup>.

The Court ruled that the Energy Act (EnWG) cannot be considered as a legal basis for current grid fee exemptions according to StromNEV. Besides, the adoption of the StromNEV provision for grid fee exemptions did not follow the correct legal procedure, according to the Court. The Court considered that a complete exemption from the fees is illegal due to a conflict with the principle of equality and contradicts the provisions of the European law, under which a non-discriminatory and cost-based regulation of the grid charges is mandatory.

---

<sup>5</sup> The Higher Regional Court of Düsseldorf (Oberlandesgericht, OLG) declared on 6 March the provision in the Electricity Grid-Charges-Ordinance (StromNEV), which provides for grid fee exemptions for energy-intensive companies, void. Moreover the OLG annulled the StromNEV provisions for grid fee exemptions previously adopted by the Federal Network Agency (Bundesnetzagentur, BNetzA). More information at: [http://www.olg-duesseldorf.nrw.de/behoerde/presse/Presse\\_aktuell/20130306\\_pm\\_Entscheidung--Netzkosten/index.php](http://www.olg-duesseldorf.nrw.de/behoerde/presse/Presse_aktuell/20130306_pm_Entscheidung--Netzkosten/index.php).