

The background is a dark blue globe showing the continents of Europe and Africa. Overlaid on the globe are numerous glowing blue lines that represent energy transmission or a network, connecting various points across the map.

Application of State aid rules to support for energy from renewable sources in the Energy Community

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- 1. State aid rules for aid to energy from renewables***
- 2. State aid rules in the Energy Community***
- 3. Cooperation between the Secretariat and the national State aid authorities***

PART 1

State aid rules and energy (from renewables)

- I. **Notion of State aid** – *Is it an economic activity; is there State intervention...*
 - * **Aid as compensation for provision of SGEI** (PSO in energy) - *Altmark criteria*
- II. **De minimis aid** -*SGEI Regulation and De minimis Regulation*
- III. **No need for notification** -*SGEI Decision and GBER*
- IV. **Compatibility assessment** - *Articles 106.2, 107.2, and 107.3 TFEU and the compatibility criteria under the SGEI Framework and the Energy State Aid Guidelines (EEAG)*

I. Notion of State aid

State measures constitute State aid if:

1. granted by the State or through State resources (in any form whatsoever)
Grants, Preferential loans, Interest subsidies, Capital / equity measures, Guarantees, Taxes and other fees, Losses take-over....
2. selective advantage of certain undertakings or production of certain goods
3. distorts or threatens to distort competition
4. affects trade between Member States

These are **cumulative** criteria!

II. No notification

- De minimis and GBER

- **De minimis:** General de minimis threshold = EUR 200.000 per beneficiary for 3 years
- **General Block Exemption Regulation**
 - **Individual aid:** Provided that conditions under the GBER are fulfilled, there is a presumption that exempted measures is compatible aid if thresholds are not exceeded
 - **Aid based on scheme:** Less formal requirements for aid granted based on a scheme and covered by the GBER. However, schemes with an annual budget exceeding € 150 million should have an evaluation plan approved by the Commission within six months, otherwise exemption no longer applies
- ** **Operating aid for electricity from RES:**
 - EUR 15 million per undertaking per project.
 - EUR 150 million per year taking into account the combined budget of all schemes when the aid is granted on the basis of a competitive bidding process

III. Operating aid for promotion of electricity from renewables - GBER

- **Operating aid for promotion of electricity from renewables**

- aid to be granted *in competitive bidding process*
- not more than 5 % of the planned new electricity capacity from renewable energy sources per year in total
- aid shall be granted *as a premium* in addition to the market price
- aid beneficiaries shall be *subject to standard balancing responsibilities*
- aid without bidding process for up to 1 MW (6MW for wind)

- **Operating aid for promotion of energy from renewables - small installations**

- Installations with less than 500kW (less than 3 MW for wind and less than 50 000 tones/year)

Energy and Environmental State aid Guidelines (EEAG) – until 2020

- aid for environmental protection or energy objectives operating and investment aid
- both investment and operating aid
- common assessment principles:
 - Well-defined objective of common interest
 - Need for State intervention
 - Appropriateness of the aid measure
 - Incentive effect
 - Proportionality of the measure
 - Avoidance of undue negative effects on competition and trade
 - Transparency of the aid

- From 1 January 2016 :

- aid shall be granted as a premium in addition to the market price
- aid beneficiaries shall be subject to standard balancing responsibilities
- measures to ensure that no incentive exists for generating at negative prices

* *Except* for installations with less than 500kW (less than 3 MW for wind)

- From 1 January 2017:

Competitive bidding process is obligation **unless** CP can demonstrate that:

- only one or a very limited number of projects or sites could be eligible or
- bidding process would lead to higher support levels (for example to avoid strategic bidding)
or
- bidding process would result in low project realization rates (avoid underbidding).

* *Except* for installations up to 1 MW (6MW for wind)

- Aid granted by **green certificates** - guaranteed demand at a price above the market price for conventional power if aid:

- is essential to ensure the viability of the RES;
- does not result in overcompensation over time and across technologies and
- does not dissuade renewable energy producers from becoming more competitive.

State aid elements

Aid for SGEI provision

No aid & No notification:

- Altmark criteria
- SGEI De minimis Reg

No notification:

- SGEI Decision

Notification:

- SGEI Framework
- General cond.

No SGEI

No aid & No notification:

- De minimis Regulation

No notification:

- GBER (energy)

Notification:

- EEAG
- General cond.

PART 2

State aid Rules in the Energy Community

• Chapter IV Energy Community Treaty

– Article 18

1. The following **shall be incompatible** with the proper functioning of the Treaty, insofar as they may affect trade of Network Energy between the Contracting Parties:

...

(c) any public **aid** which distorts or threatens to distort competition by favouring certain undertakings or certain energy resources.

2. Any practices contrary to this Article shall be assessed **on the basis of criteria** arising from the application of the rules of Articles 81, 82 and 87 of the Treaty establishing the European Community.

– Article 19

With regard to **public undertakings** and undertakings to which special or exclusive rights have been granted, each Contracting Party shall ensure that as from 6 months following the date of entry force of this Treaty, the principles of the Treaty establishing the European Community, in particular Article 86 (1) and (2) thereof, are upheld.

- *Contracting Parties are under **an obligation** to:*
 - establish an independent national enforcement authority
 - transpose, implement and enforce EU State aid rules to RES support under the Energy Community Treaty
- *** Energy Community Secretariat **Policy Guidelines** on the Applicability of the EEAG (November 2015) => Obligation to apply EEAG to RES support schemes + ECS will apply them in enforcement cases*
- ***NEW Cooperation between the Secretariat and State aid authorities => Obligation for the State aid authorities to notify the Secretariat when engaged in energy cases (Article 2 Amended Dispute Settlement Rules)***

Key messages:

- **Aid from RES** – stricter approach than under 2008 Guidelines:
 - **objective** – transition to a cost-effective provision on market-based principles;
 - **stricter more economic approach** – CPs to prove that it achieves env.objective and without such measure the investment would not take place;
 - lower thresholds; **NEW** time-limit (10y); **NEW** mandatory bidding process;
NEW balancing responsibility
- **Aim:** lower the amount of aid; go for targeted and more efficient and proportionate aid
- Contracting Parties are under **an obligation** to transpose, implement and enforce EU State aid rules to RES support **under the Energy Community Treaty => Obligation to apply EEAG to RES support schemes + ECS will apply them in enforcement cases**
- **NEW Cooperation between the Secretariat and State aid authorities => Obligation to notify when engaged in energy cases; notify draft decisions ...**



*Thank you
for your attention!*

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