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

Rozeta Karova, Ph.D.
Senior Energy Lawyer, Energy Community Secretariat
Outline

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)
Steps for assessing State aid

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)
IV. Notified aid
- Compatibility Assessment - Art. 107(3)(c) TFEU

**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
V. Application of EEAG to aid for renewables

- 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.
Assessment of energy-related State aid measures

State aid elements

- Aid for SGEI provision
  - No aid & No notification:
    - Altmark criteria
    - SGEI De minimis Reg
  - Notification:
    - SGEI Framework
    - General cond.

- No SGEI
  - No notification:
    - SGEI Decision
  - No aid & No notification:
    - De minimis Regulation
  - No notification:
    - GBER (energy)
  - Notification:
    - EEAG
    - General cond.
PART 2

State aid Rules in the Energy Community
Energy Community Acquis on Competition

• 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.
Application of State aid rules & cooperation with the Secretariat

- 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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