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EPIA reply to the public consultation on the Draft guidelines on environmental and energy aid for 2014-2020

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Key messages:

- **State Aid rules should not replace energy policy.** While these guidelines should only set the conditions under which aid for energy and environment may be considered compatible with the Treaty, the current set of proposals on renewable energy (RES) appears to go far beyond the framework defined in the relevant European legislation.
- Several provisions would indeed unduly constraint Member States' capabilities to reach their 2020 binding renewable targets. In particular, the **technology neutral-bidding process** that Member States would have to implement when granting support to "deployed" renewable electricity technologies is constraining their choices and could undermine the very objective of helping a mix of different technologies mature and achieve their full competitive potential. Experience has moreover shown that technology-specific support is the best way to avoid overcompensation.
- The **distinction between deployed and less deployed renewable electricity technologies is irrelevant and arbitrary.** It would introduce barriers to new market entrants and slow down the further cost decline of renewable technologies. It is going against the establishment of a level playing field among investors across Europe. Member States should remain capable of accompanying specific technologies down their learning curve.
- While many provisions are obviously designed for large-scale energy projects, the recognition of the specificities of **small-scale generation** is welcome. A threshold of 5 MW should however be applied so as to ensure that cooperative-driven projects can qualify for feed-in-tariffs and other more suitable forms of support.
- It is not the objective of the State Aid regime to ensure the physical **integration of renewable electricity in the system.** A detailed legal framework (Renewable Directive 2009/28/EC) is already in place to achieve this goal and should be respected.
- Member States should keep the full control of the means to reach their binding RES targets. The potential of renewable energy sources **across Europe** should therefore only be exploited in the framework of the cooperation mechanisms established by the Renewable Directive.
- More clarity is needed on the conditions under which **existing renewable energy schemes** will have to be adapted over time in order to provide certainty to investors.

Preliminary remarks

EPIA welcomes this opportunity to comment on the new draft guidelines, which should help Member States achieve their 2020 binding renewable energy targets cost-efficiently.

As a preliminary remark, it should however be noted that several clerical mistakes have been identified, especially in cross-references, while some key concepts are not properly defined. Those approximations in the drafting of the document sometimes make it difficult for stakeholders to really understand what the Commission is proposing, and therefore forces the reader to guess what is meant.

In order to ensure consistency with the recently published communication on “Delivering the internal electricity market and making the most of public intervention”, it is also important to ensure that all subsidies, including those granted directly or indirectly to fossil fuels (which amounted to €26bn in 2011 according to the OECD) and nuclear energy, are scrutinised.

The PV industry would like to draw the attention of the European Commission and of the Member States to the following points:

1. Aid to energy from renewable energy sources

Distinction between “deployed” and “less deployed” technologies (paragraph 119)

These new draft Guidelines establish a distinction between “deployed” and “less-deployed” technologies. This distinction, the basis of which remains unclear since both the electricity *consumption* and *production* covered by a given technology at EU level are used in the document, determines the conditions under which aid can be granted at national level.

EPIA considers this approach ill-designed for the following reasons:

- Using the degree of deployment as a parameter to automatically declare that a technology is mature is **arbitrary**. Such an approach would neglect the remaining efforts which need to be done in order to accompany a new technology to compete in a given market without dedicated support. Indeed, the market penetration achieved by a new technology is usually the result of the supporting framework in place and not an outcome of its intrinsic competitiveness.
- Considering the market penetration of a given technology at European level would introduce **additional barriers to new market entrants**: it would indeed constrain investors in under-developed markets to rely on a limited set of supporting instruments (feed-in-premium or certificates), simply because a technology has experienced market development somewhere else. Since the competitiveness of a renewable technology varies from one country to another and is by no means only linked to the evolution of the cost component, such a logic is going against the establishment of a level playing field among investors across Europe.
- Given the current **uncertainties on the evolution of the European electricity mix**, which still greatly depends on the respective national choices, a technology considered “deployed” at a given point in time can very well be considered “less deployed” later on. Such an uncertainty would be detrimental to investors’ confidence.

In its new energy lending criteria, the EIB¹ distinguishes between mature and emerging technologies, “with a separate economic rationale for supporting each”:

- Mature technologies “are those (...) where costs are not expected to decline significantly – although they are expected to decline more rapidly than conventional alternatives”
- Emerging technologies are those “which are currently not competitive with the least cost alternative” but “with a prospect of becoming competitive in a reasonable time frame”.
- In addition, the EIB underlines that “cost declines result from RDI, scale and learning by doing effects, and require the continued installation of capacity in the sector”.

¹ EIB and Energy: Delivering Growth, Security and Sustainability – EIB Screening and Assessment Criteria for Energy Projects, 25 July 2013 - http://www.eib.org/attachments/strategies/eib_energy_lending_criteria_en.pdf

The current Commission's proposal clashes with this approach and would on the contrary significantly slow down the cost decline of renewable technologies such as PV.

EPIA believes that the distinction between deployed and less-deployed technologies should be abandoned. Member States should be free to use the whole spectrum of supporting instruments, whatever the level of deployment of a technology at European level. Each Member State should remain able to tailor-make its support schemes according to the **remaining cost decline potential** of a given technology.

Paragraph 119 and all the provisions related to “deployed” technologies (paragraphs 120 and 129) should therefore be deleted.

Granting of aid by way of a technology-neutral bidding process (paragraphs 120 and 129)

For “deployed” technologies, according to the draft guidelines, aid in the form of feed-in-premium is granted through a competitive bidding process (paragraph 120); aid in the form of certificates is granted without distinction between technologies (paragraph 129).

In both cases, the draft guidelines introduce a notion of technology-neutrality while indicating that Member States may require a minimum number of different renewable energy sources (solar, wind, ocean) to receive support, but without pre-defining technologies (PV or CSP, on-shore or off-shore wind, tidal or waves, etc).

This approach again raises several issues.

From a **conceptual perspective**, this proposal contradicts the very purpose of State Aid, which is to remove barriers while helping less competitive technologies develop: a technology neutral approach would simply undermine this objective by allowing only close-to-competitive technologies to be supported.

From an **economical perspective**, this approach would lead to over-compensation. While only the currently cheapest technologies would get support, other technologies that could – if they were developed – become the most cost-effective options in the future would be excluded. Alternatively, the support level would have to be quite high to allow these less mature technologies to come in, while generating windfall profits for the more mature ones. In order to avoid over-compensation, support should on the contrary be technology specific and tailor-made to segments and markets.

Finally, from a **legal perspective**, a technology-neutral selection process is contrary to the Article 194 of the Treaty. It would indeed prevent Member States from supporting technologies which are not necessarily the cheapest ones. In particular in countries with an already high share of renewable electricity, the priority should be to secure an expansion of renewables which requires technological choices. Such an objective would hardly be achievable under the current guidelines.

For the above mentioned reasons, **paragraphs 120 and 129 should be deleted.**

Opening-up of the possibility to restrict aid because of grid stability concerns (paragraph 120 b))

As a framework intended to control state intervention, it is not the objective of the State Aid regime to ensure grid stability.

When it comes to the integration of renewable electricity into the grid, a detailed legal framework (Directive 2009/28/EC) has been set up in order to achieve this goal. In particular, Article 16.2 of this Directive describes the conditions under which **priority dispatch and access for renewable electricity** shall be ensured by the Member States. The possibility given to Member States in paragraph 120 b) of the draft guidelines to exclude renewable electricity sources in certain geographical areas to secure grid stability is therefore not relevant.

Provisions related to grid stability - **paragraph 120b** - should be deleted from the draft Guidelines.

Small-scale installations (paragraph 123)

For small scale generation and on markets with a very high number of participants, auctioning procedures cannot be envisaged in an efficient and cost-effective way. Similarly, support mechanisms which would force the small-scale generator to find a seller on the wholesale market would – under the current market conditions – introduce further distortions.

EPIA therefore welcomes the recognition in the new draft Guidelines that aid in the form of feed-in-tariffs (FiT) remains possible for installations below a certain generation capacity.

In the case of projects developed by citizens organised in cooperatives, the threshold of 1 MW however appears too low.

In addition and in order to treat all generators on an equal footing, **EPIA suggests the threshold of 5 MW to be applied to all technologies.**

Finally, the consultation document obviously contains a clerical error: reference is made to points 122(a), 122(d) and 122(e), which do not exist. **The Commission should confirm that the paragraph 123 is actually referring to points 121(a), 121 (d) and 121 (e).**

Definition of the level of aid per unit of energy (paragraph 121 a, 123 and 131)

The current draft guidelines indicate that for less deployed technologies and small installations, the aid per unit of energy does not exceed the difference between the total levelised costs of producing energy (LCOE) from the particular technology in question and the market price of the form of energy concerned.

While this approach does make sense for floating feed-in-premium – where the RES generator receives an amount of aid on the top of the market price – it requires some clarification when it comes to feed-in-tariffs. Indeed, the RES generator usually receives the level of the feed-in-tariff, not the market price. It will therefore be important to clarify that for feed-in-tariffs, the beneficiary will receive an amount of aid per unit of energy which consists of the market price plus the difference between this market price and the LCOE.

In addition, the **footnote 60** is extremely important since it confirms that “a normal rate of return which does not exceed normal industry benchmarks” can be included in the production costs. It should however apply consistently throughout the document.

For RES generators benefitting from feed-in-tariffs (paragraph 123), **the aid per unit of energy should amount to the level of the total levelised costs** of producing energy from the particular technology.

Each time the guidelines refer to the concept of “levelised costs of energy”, they should clarify that a **normal rate of return in line with industry benchmarks can be included in the production costs**.

Balancing responsibilities of RES generators

When defining the conditions under which RES generators could benefit from aid, the draft Guidelines stipulate that beneficiaries should be subject to standard balancing responsibilities where competitive intra-day balancing markets exist.

EPIA welcomes the recognition that balancing responsibilities can only be borne by renewable generators under certain conditions. In a recent report done by Eclareon and the Öko-Institut for the European Commission², it was highlighted that “in order to provide efficient balancing, functioning balancing markets are arguably more important than exposing RES-E to balancing risk”. **The prerequisites for attributing balancing responsibilities should therefore be further specified in the guidelines:**

- a) State of the art forecasting tools should be used by TSOs when operating the system so as not to overestimate the needed reserves
- b) Liquid intra-day markets with intra-hour gate closures time should be in place in order to help RES generators adjust their bids shortly before real-time, thus reducing imbalances
- c) Fair access to spot markets for intermediaries (aggregators) should be ensured
- d) Technical and regulatory frameworks for aggregation should be in place
- e) Fair and harmonised rules for imbalance settlement should be in place
- f) Current balancing rules and products should be adapted (timeframe and possibly level of confidence) in order to allow aggregators of RES generation to participate in the balancing market
- g) Generators should not pay for an imbalance where the latter is the result of a service provided on demand to the distribution system operator whose grid the generator is connected to.

Unfortunately, today’s market reality in most European countries is still far away from making the full bearing of balancing responsibilities for renewable energy providers possible in a fair manner.

More importantly, **for small scale generation**, it is technically impossible to attribute a specific deviation (hence, an imbalance cost) to a specific small-scale generator. The report from Eclareon and the Öko-Institut also indicates that “it is quite obvious that providing balancing capacity on an individual level (e.g. a battery next to each wind generator) requires a higher overall balancing capacity and leads to higher costs than balancing on a system level where individual imbalances at least partly offset each other”. For these reasons, installations below 5 MW should therefore not be exposed to standard balancing responsibilities.

Finally, it should be kept in mind that a parallel process is currently conducted within the framework of the **Balancing Network Code** developed by ENTSO-E. It will be important to reflect the above mentioned points also in this code.

² Integration of electricity from renewables to the electricity grid and to the electricity market – RES INTEGRATION, eclareon and Öko-institut, March 2012.

Specific markets adjustments – as detailed above - should be implemented before attributing standard balancing responsibilities to renewable generators, who have currently limited means to reduce their imbalances.

Installations **below 5 MW** should not be exposed to standard balancing responsibilities.

Ability of Member States to reach their 2020 binding RES targets (paragraph 118)

Cross-border support mechanisms could only lead to cost-efficiencies if all parameters (grid costs and their ability to represent congestion, capital costs, administrative costs, electricity prices, etc) were identical across Europe. Today's market reality is vastly different.

The **paragraph 118** however seems to suggest that Member States would **automatically** be obliged to allow for cross border support once a cooperation mechanism is in place.

It is therefore important to clarify that **the existence of a cooperation mechanism does not imply that a Member States should necessarily allow for cross-border support.**

Duration of the aid (paragraph 116)

According to the draft guidelines, the Commission will authorise aid schemes for a maximum period of ten years. If maintained, such measures should be re-notified after such a period.

For the sake of clarity, it should be highlighted that **the 10-year limit applies to the schemes and not to the period during which the support is granted.**

Treatment of existing investments (paragraph 230)

EPIA welcomes the confirmation that aid granted to a beneficiary under a scheme previously agreed by a Member State will not be put into question.

This provision is crucial to secure existing investments. It also echoes the recently published guidance on the design of national renewable energy support schemes, which highlights the need to “avoid changes that alter the return on investments already made and undermine investors' legitimate expectations”.

Adaptation of existing RES support schemes (paragraph 230)

The footnote 100 clarifies that existing RES schemes which are not changed can remain in place even after the entry into force of these new Guidelines.

However, it indicates that “a change means any adjustment to an existing scheme other than the publication of new support tariffs according to an already existing and approved methodology”. This approach is too restrictive as it could lead to a situation where a Member State does not introduce any necessary change to a given scheme (other than the support level) in order to avoid being obliged to switch to another, less relevant support mechanism.

EPIA considers that **Member States should remain free to make necessary incremental changes to existing schemes other than the level of support**. The Guidelines should only apply to new schemes once a Member State has decided to switch from a given type of support scheme (FIT) to another type (Feed-in-premium or certificates). The **footnote 100** should be adjusted accordingly.

2. Aid in the form of reductions in funding support for electricity from renewable sources

EPIA believes that a balance should be reached to safeguard a sufficient base of energy consumers for the sustainable financing of the renewables development while addressing concerns related to the competitiveness of industry exposed to international competition.

3. Aid to energy infrastructure

EPIA considers that public support should be restricted to those limited cases where tariffs alone cannot deliver enough incentives to the system operators. In these particular cases, and once it has been established that the potential support provided by the Connection Europe Facility or other European instruments is insufficient, intervention at national level should be envisaged.

Given the upcoming investment needs in **distribution and smart grids**, it is important to ensure that also distribution system operators can benefit from support. In particular, the voltage threshold of 10 kV identified in the Projects of Common Interest is not appropriate: it would neglect all the projects in the low voltage grid, a grid segment which hosts the largest number of customers and which is facing an increasing number of challenges.

EPIA supports the inclusion of justified aid to energy infrastructure in the draft Guidelines. It is important that **projects in the low voltage grid - below 10 kV – are eligible for support**.

4. Aid for generation adequacy

EPIA considers extremely important that a tight control on capacity mechanisms is put in place through the revised State Aid regime to avoid unjustified market distortions and support to mature technologies.

First, it is important to ensure that the discussion about generation adequacy is conducted in the wider context of **system adequacy**. As highlighted in paragraph 205, Member States should therefore primarily consider demand side management measures and increased interconnection capacity as ways of achieving generation adequacy.

Second, the need to intervene should be demonstrated and quantified on the basis of a **harmonised methodology across Europe**. Currently, the type of data and the methodologies used by TSOs differ from one country to another. EPIA therefore welcomes the current efforts of ENTSO-E to provide the Member States with a more detailed methodology to assess generation adequacy.

Third, remuneration mechanisms should be **reversible** in order to avoid any long term lock-in effects.

Finally, these mechanisms should be based on competitive awarding procedures and should aim at **minimising CO2 emissions**. The paragraph 212 which clarifies that a measure should in principle not reward investments in generation from fossil fuel plants unless it can be shown that a less harmful alternative to achieve generation adequacy does not exist is therefore welcome.

EPIA welcomes the framework conditions under which aid can be granted to ensure generation adequacy. The support should be based on a **harmonised methodology, time-bound and open** to all types of measures ensuring generation adequacy – including demand. The supporting measure should also help minimise CO2 emissions when securing generation adequacy.

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