

State aid Registry - Directorate-General for Competition  
European Commission 1049 Bruxelles, BELGIQUE  
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Environmental Protection"

**The Danish position on the Commission draft for Environmental and  
Energy Aid Guidelines 2014-2020**

14. februar 2014

In response to the Commission "Paper of the Services of DG Competition containing draft Guidelines on environmental and energy aid for 2014-2020" Denmark has the following comments.

The Danish authorities generally supports a coordinated approach and a uniform set of rules to clearly and precisely define the goals and means in which Member States construct aid schemes in the environmental and energy field. It is, however, important that these rules leave adequate room and flexibility for the particularities of each Member State in order to ensure the most efficient green transition across the Community.

**MINISTRY OF GROWTH  
AND BUSINESS**

Slotsholmsgade 10-12  
DK - 1216 København K

In light of this the Danish authorities can overall offer its support for the main objectives put forward by the Commission in this draft. In particular the proposed expansion of the scope of the guidelines to include energy in the guidelines is welcomed. The Danish authorities can offer their support for the objectives set out by the Commission to promote resource-efficiency, energy-efficiency and the phasing out of subsidies for fossil fuels. The Danish authorities also support making best-practices on RES<sup>1</sup>-aid with an eye on a gradual process, which will promote more uniform RES-aid across Member States, in respect of preserving the incentives to further expand RES according to the ambitious Danish RES-goals. This will also help preserve the investor-trust, the national potential for RES and the multitude of tax-structures.

Tlf. 33 92 33 50  
Fax. 33 12 37 78  
CVR-nr. 10092485  
EAN nr. 5798000026001  
evm@evm.dk  
www.evm.dk

**General remarks**

As a preliminary remark the Danish authorities would like to emphasize that any impact-assessment made in relation to the proposed provisions would only fully serve its purpose, if it is conducted, made available to Member States and reflected by the Commission before the final adoption of the guidelines.

As regards the proposed transparency requirements the Danish authorities agree that further transparency and peer-review can have positive impacts on the market. Denmark must, however, underline that the Commission must take national confidentiality laws and laws on data protection into consideration when setting out requirements for the level of detail of the register. In connection hereto the Danish authorities must also stress that consideration should be taken to the fact that it will be very administratively burdensome for undertakings and the authorities of Member States to provide all the necessary information and manage and set up such a system, especially considering that it will demand a great degree of monitoring to keep it updated and correct at all times.

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<sup>1</sup> Renewable Energy will throughout this paper be referred to as RE.

## Main points

- **Technology neutrality:** The requirements for technology neutrality for mature or immature technologies will set up severe barriers for Member States to implement strategic support schemes effectively as they cannot be targeted at certain technologies. It is therefore of crucial importance for the EU's transition towards green energy systems and a low carbon economy that Member States are allowed to pre-define the technologies that can be granted operating aid for mature RES technologies in a bidding process. It is suggested, that the threshold for when a technology is considered a deployed technology should be 3 % in electricity production at EU level.
- **Transitional arrangements:** From the multilateral meeting held on February 10 2014 discussing the guidelines, it was the clear perception of the Danish delegation from what was announced by the Commission on this matter, that existing RES-schemes would be able to run for the duration of the term, which they were approved for. In other words all state aid beneficiaries, who have received a commitment of operating aid and in confidence hereto have invested accordingly, would be able to maintain this aid. This also applies to aid schemes, which do not concern RE-aid. Furthermore we noted that the Commission expressed forthcom- ingness towards setting a transition period at approximately 24 months.
- **Reductions in funding support for energy from renewable sources:** The current draft reduces member states' incentives to implement ambitious climate and energy policies. This is due to some sectors – eg. gardeners and greenhouses and other electricity intensive sectors – paying PSO charges and being exposed to global competition are excluded from partial compensation of the additional costs. It is proposed to allow reduction in PSO charges to electricity intensive undertakings, defined as undertakings where more than [1.500] MWh is utilised per [1 million] euro value added or where the electricity is utilised for electricity intensive processes such as mineralogical and metallurgical processes, elec- trolysis and chemical reduction. In addition, each member state should be allowed to choose whether to make that reduction con- ditional on the conclusion on agreements between the Member State and the beneficiaries to achieve at least the same level of en- vironmental protections as would have been achieved by paying the full PSO-costs.

- **Non-harmonised environmental taxes:** The assessment of the necessity of the aid should be the same when it comes to taxes levied on energy products used for electricity production and other non-harmonised taxes. The assessment in the draft used in relation to other non-harmonised taxes is preferable since it does not involve the carbon leakage criteria, which have been designed to solve problems in an EU harmonised scheme and not problems in relation to non-harmonised taxes on energy products used for electricity production. The reference to the carbon leakage criteria should be left out.
- **Reductions or exemptions from environmental taxes:** It should continue to be possible to exempt cogeneration of heat and power (CHP) within the EU ETS from CO<sub>2</sub> taxation. CO<sub>2</sub> tax should not be levied in sectors that are covered by EU Emissions Trading Scheme (EU ETS) in order to avoid overlap between CO<sub>2</sub>-taxation and ETS. Aid in form of reductions or exemptions from environmental taxes related to CHP should continue to be assessed under section 5.6 (environmental taxes), not 5.3. It is important that energy taxes, including taxes on electricity, continue to be treated as harmonised taxes
- **Cooperation mechanisms:** Operating aid for RES projects should not be mandatorily linked to the use of the RES-directive's cooperation mechanisms, as it would weaken the economic impact and political commitment in all Member States to obtain the necessary funding for the green transition, if funds are channelled to projects outside the country's borders. The Danish authorities are therefore pleased that the Commission in the multilateral meeting held on February 10 2014 were responsive to correcting the wording in the proposed provisions on this, so it becomes clear that these mechanisms are strictly voluntary.

### Specific remarks

1. *Operating aid - stronger transitional arrangements if requirement of bidding processes*
2. *Technology neutrality*
3. *Use of cooperative mechanisms for the RES-directive Article 7-9*
4. *Monitoring and continuous adjustment of operating aid*
5. *Obligation of publication*
6. *Aid in the form of reductions in funding support for electricity from renewable sources (lump sum tax credits)*
7. *Investment aid*
8. *Capacity mechanisms*

9. *The possibilities of granting aid for companies in the form of reductions or exemptions from environmental taxes*

1. *Operating aid - stronger transitional arrangements if requirement of bidding processes*

The draft proposes that Member States provide operational aid only to electricity-producing RES- and combined heat and power generators, after using a bidding process or through the use of green certificates. If a Member State does not want to establish a green certificate market, the only alternative will be bidding processes. In this way the draft fails to accommodate Member States whose aid systems are based on a technology-specific subsidy model in relation to the electricity market price.

In some Member states operating aid is mainly based on a subsidy model with fixed subsidy per. kwh of produced electricity in addition to the market price or the grant, adjusted in relation to the electricity market price, according to whichever RES technology is concerned.

A bidding process will require a substantial shift in these existing operational aid systems, which have already been state aid approved or will be approved before the guidelines expire at the end of 2014.

If bidding processes will be a requirement to provide operational aid to the production of electricity, the transitional provisions will need to be adapted, in order for the existing approved state aid schemes to remain in force until they expire in accordance with the Commission's approval. Otherwise it will not be possible to secure the investors who have already made investments in rely on the existing aid schemes.

The Danish authorities' understanding of the transitional rules is that all schemes concerning operating aid for energy production from renewable energy sources can stay in force until they expire according to the approval from the Commission. Besides beneficiaries *from all kind of schemes* concerning operating aid, will be granted aid under the entire period, if the beneficiary has received such a confirmation from a Member State that it will benefit from state aid for a predetermined period according to an approved state aid scheme.

For Danish aid schemes currently notified, but not yet approved, there will be an expectation that such schemes will be operational for at least 10 years with the possibility of re-notification. For other operating aid schemes for RES, this means a need for transitional arrangements of up to 10 years and similarly for operating aid schemes for cogeneration.

In relation to aid for decentralized cogeneration, which up to and includ-

ing 2018 receive the basic amount financed by the PSO tariff, the draft sets up some obstacles for this state aid scheme to be extended, if it proves necessary with continued aid after 2018.

From the multilateral meeting held on February 10 2014 discussing the guidelines, it was the clear perception of the Danish delegation from what was announced by the Commission on this matter, that existing RES-schemes would be able to run for the duration of the term, which they were approved for. In other words all state aid beneficiaries, who have received a commitment of operating aid and in confidence hereto have invested accordingly, would be able to maintain this aid. This also applies to aid schemes, which do not concern RE-aid. Furthermore we noted that the Commission expressed forthcomingness towards setting a transition period at approximately 24 months.

## *2. Technology neutrality*

As regards the requirements on technology neutrality the Danish authorities must, however, strongly emphasize that each Member State should continue to determine, which RES-technologies are best suited to effectively ensure a green transition. Denmark has already made a comprehensive RES-expansion of the most cost-effective technologies, particularly wind turbines on land. The Danish focus is therefore on implementing the Danish Green Transition cost-effectively with technologies that ensure security of supply, the continued stability of the grid and an energy system based on electricity. The prerequisite for this is an aid system, which continues to be technology specific.

It should be up to each Member State to determine which RES-technologies they wish to aid. This is also in coherence with the so-called "subsidiarity principle". The need to apply an array of aid instruments in relation to RES has been underlined in the IEA-report; "Deploying Renewables 2011". One of the main "best practice policy principles are as such; "[To] Take a dynamic approach to policy implementation, differentiating according to the current maturity of each individual RE technology (rather than using a technology neutral approach)".

Setting out a requirement of technological neutrality in state aid can be problematic, because it does not allow for the development and commercialization of non-mature technologies which in the long run could ultimately prove more cost-effective than current technologies.

The only technology-neutral RES-aid systems used in any significant extent today are green certificates. The Commission's draft guidelines for RES-aid indicate that such systems can often lead to an increase in the cost expansion of RES because of the increased risk premium, which

manufacturers in such a system will often require. In the mentioned IEA publication it is concluded on the basis of a quantitative analysis of the IEA Countries RES-aid, that the countries, which applied certification systems, paid more for the production of RES than those, who used market-based electricity production subsidies.

The Commission's rationale behind a technology neutral approach seems to be the encouragement of investments in the most cost-effective renewable-technologies (RES-technologies), so that Member States can meet their RES-obligations for the cheapest price as possible. An objective of aiding the most cost-effective renewable technologies seems reasonable in Member States where there has so far only been a modest expansion of RES. The guidelines must, however, take into consideration that many Member States such as Denmark have already undergone a massive expansion of RES, particularly of the most cost-effective technologies, which in Denmark is especially wind turbines on land.

The requirement of technological neutrality will delay and increase the cost of the Member States' conversion to an energy system, which is not dependent of fossil fuels, because Denmark and other Member States will be unable to target schemes in the sectors, where it is necessary to promote the green transition. Those Member States should continue to be able to focus their efforts on securing a continuous RES-expansion, while ensuring security of supply, the continued stability of the grid and a gradual change in the energy system from being primarily fuel-based to being electricity-based to a higher degree.

Maintaining the possibility of granting technology specific aid is crucial to some Member states in order to meet the medium and long term energy policy objectives as cost-effectively as possible. A technology neutral support would result in Member states being either unable to meet its renewable energy targets (if support level is determined, corresponding to the need for support to the cheapest renewable technologies) or that the cheapest renewable energy technologies will receive too high a compensation (if support level is determined, corresponding to the need for support to the more expensive RES-technologies that are needed to use to achieve the renewable targets).

The Danish challenge the coming decades in the field of renewable energy will include a gradual change of the energy system from being primarily fuel based to being mainly electricity based. Due to this overall planned structural change, continued technology-specific RES aid will be needed for years to come. The Danish aid system for electricity production from RES and cogeneration has always been technology-specific. The system has resulted in a diversity of technologies in the expansion of

RES and has also ensured that there have been established RES- and co-generation technologies in different parts of the energy system, where the competitive situation in relation to the use of fossil technologies is very different, partly because of substantial differences in tax levels.

Regarding “aid for less deployed technologies producing electricity from renewable sources”, the draft guidelines accept in point 121 technology specific support, provided the aid is granted by way of feed-in-premium or equivalent market based support.

The Danish authorities propose that this approach on less deployed technologies should apply on deployed technologies as well.

#### *The threshold for less deployed technologies*

The draft is differentiating between aid for deployed and less deployed technologies. The criterion is depending on the technology share in electricity production reached, and it is suggested in the draft that a deployed technology should at least cover [1-3] % of the gross electricity production at EU level, before it is considered “deployed”.

The Danish position is that this threshold should be as high as possible and at least 3 %, considering the concerns on technology neutral bidding processes.

#### *3. Use of cooperative mechanisms for the RES-directive Article 7-9*

The Danish authorities support the cooperation mechanisms set out in point 118 in the RES-Directive, as they can serve as a useful tool for Member States that may not have the same potential to meet their RES-obligations within their borders.

The Danish authorities must, however, also emphasize that the use of these instruments should continue to be voluntary for the Member States. It is considered to be politically unacceptable, if future operating aid schemes are open to be used for investments in RES-capacity outside Denmark's borders. Political commitment is essential to obtain the necessary funding for the green transition. If the use of these mechanisms in a tender for RES means, that a part of the aid will be channeled to projects outside the country's borders hereby also moving the development of jobs, growth in companies and technology out of the country, the political confidence will be weakened with the result that the RES-objectives cannot be reached.

In the multilateral meeting concerning the proposed draft, which took place February 10 2014 the Commission reassured Member States, that the provision on cooperation mechanisms should not be read as an invol-

untary provision. Accordingly Member States will not be imposed an obligation to use this provision. In light of this Denmark believe that it would be appropriate to correct the wording of the provision, so it is clear that operating aid for RES projects will not be linked to the use of the RES-Directive's cooperation mechanisms and that it is clear that the cooperation mechanisms remain fully voluntary, which Member States may choose to make use of if appropriate.

#### *4. Monitoring and continuous adjustment of operating aid*

The draft also sets out a requirement that Member States monitor their operating aid schemes in a special monitoring program. There is a call for reviews of all systems at least every two years and adaptation of the aid, if it is proved that the aid intensity is higher than what is necessary for the requirements of incentive and proportionality etc.

It is not clear from the draft whether this refers to State aid schemes as a whole or the specific projects, which have been given a promise of commitment for operating aid.

If it is intended for specific projects, this implies that an investor will only be guaranteed an aid-level for up to two years contrary to the Danish aid for offshore wind turbines today via a tender where the grant period is typically about 12 years. This could potentially adversely affect the investors' incentive to invest in major projects, if the investors cannot be guaranteed operating aid for more than up to two years at a time, including the risk of down-regulating aid will increase the investment costs and thus increase the need for aid.

If the green transition is to succeed, it is necessary to implement a number of major projects in order to shift electricity production to RES. It is crucial for the implementation of these projects, that they are ensured aid of a certain duration.

#### *5. Obligation of publication*

The Commission proposes that Member States publish a series of specific information relating to each aid beneficiary. This is highly problematic, especially in situations where the aid is granted via tax incentives, because the information is considered confidential. This information is by national law often covered by the secrecy of the authority in question.

To this must be added that the confidential information could be detrimental to the company in question if publicized and that it is only the company itself, who can assess whether the tax information or research information is confidential in its nature. This problem is avoided when the Commission publishes its decisions.



It should also be noted that the general information regarding any notified aid scheme concerning reductions or exemptions from environmental taxes already is published on a public website.

*6. Aid in the form of reductions in funding support for electricity from renewable sources (lump sum tax credits)*

The Danish authorities consider it positive that the draft opens up the possibility of setting up aid schemes in the form of aid to cover the PSO-costs of companies. To ensure the fulfillment of the climate and environmental goals of the EU, including the use of RES and the reduction of greenhouse gases, it is necessary to continue a significant expansion of RES. To the extent that the expansion is financed by the users, the Danish authorities considers it important to ensure that aid for payment of the PSO tariff for energy-intensive enterprises in Member States will be a possibility.

The Danish authorities find that aid in the form of reductions in funding support for electricity from renewable sources should be allowed if the business is electricity-intensive. An “electricity-intensive business” shall mean a business entity, where more than [1.500] MWh as in Sweden is utilised per [1 million] euro value added or where the electricity is utilised for electricity intensive processes such as mineralogical and metallurgical processes, electrolysis and chemical reduction and where "value added" shall mean the total turnover liable to VAT including export sales minus the total purchases liable to VAT including imports.

In addition, each member state should be allowed to choose whether to make that reduction conditional on the conclusion on agreements between the Member State and the beneficiary or associations of beneficiaries to achieve at least the same level of environmental protections as would have been achieved by paying the full PSO-costs.

The EU has committed itself to reducing its energy consumption by 20 percent in 2020. The Energy Efficiency Directive, however, delivers only 17 percent, which is why there is a need for additional measures to deliver the remaining 3 percent. Denmark has good experiences with providing aid in the form of energy tax-reductions for companies, which have process energy, if these companies sign agreements on energy efficiency.

In this way the company is given a financial incentive to use certified energy management systems and to continue with optimizing energy consumption in the company. As an example of the good experiences one can

mention that gardeners who have had an agreement on energy efficiency since the measure was launched in 1996 and up to 2011 have reduced their energy consumption by approximately 40 per cent per m<sup>2</sup> of greenhouse area.

Consequently the Danish authorities recommend that the instrument with agreements on energy efficiency improvements should also be allowed to use in this area in the future Environmental and Energy Guidelines.

The Danish authorities note that the Commission in its "Consultation Paper" presented in March 2013 announced that it was being considered extending the new Guidelines to cover granting aid for the PSO cost of companies.

The model described in the Commission's draft guidelines has a different definition of which companies can be granted aid for PSO costs. The draft is based on the carbon leakage criteria. These criteria would exclude a number of electricity-intensive companies from aid to payment of the PSO tariff, which is regrettable as they might not meet the carbon leakage criteria, but still have high PSO costs and great potential for energy savings. Carbon leakage businesses do for instance not include the agricultural sector and hence not the gardeners.

The carbon leakage criteria are not relevant when applied to national schemes. Therefore, the Danish authorities considers that it should be possible to broaden the criteria, using for instance an energy intensity criteria as in Sweden, with a view to take into account higher national PSO costs for companies in some member countries. Using the carbon leakage criteria means distorting competition between member states, as member states have chosen different paths to finance the expansion of RES. *This means that the Commission's current draft gives de facto preferential treatment to electricity intensive enterprises in countries, where the expansion of RES is financed over the fiscal budget. This cannot be in the interest of the Commission nor the EU at large.*

*The Danish authorities have prepared a suggestion for the Commission, which shows how it may be possible to aid electricity intensive companies. As aid for electricity intensive companies in the Danish suggestion is conditioned on the entering of agreements between the member state and the beneficiary, aid of this kind is by no means an 'open door' for state aid.*

The Danish authorities recognize that there is consideration to be made with regard to companies subject to the carbon leakage criteria, which are particularly energy-intensive and subject to international competition, and

therefore particularly sensitive to high energy taxes and high PSO-payments. However, it must be noted that there currently exist guidelines for certain state aid measures under the scheme for trading greenhouse gas emissions after 2012 (2012 / C 158/04), which is precisely a possibility for Member States to aid these type of companies. Similarly, the upcoming PSO scheme could also apply to this category of businesses.

The Danish authorities consider, that the funding period in the current Environmental Guidelines' section on aid in the form of reductions in energy taxes of 10 years without degression is appropriate, which the Danish authorities recommend also applies to the PSO funding.

Finally the Danish authorities note that it is important that the rules on state aid include granting of aid for energy-intensive industries' payment of PSO-fee.

Regarding lump sum, Denmark finds that it is against the Danish Constitution to differentiate between different end-users of electricity by using lump sum tax credits. Consequently aid in this area must be given as grants. The Danish authorities therefore urge the Commission to maintain the current wording and require aid to beneficiaries to be paid as a lump sum amount.

#### *7. Investment Aid*

According to the draft the maximum level of investment aid is generally lowered by 15-40 percentage points. This means that the share of costs for environmental improvement projects, which the company can recuperate are being diminished.

From an investment point of view the lowering of the intensity will make some environmental improvement projects more expensive for companies. As a consequence these environmental projects will not be economically viable and will therefore not be implemented.

It is not consistent with a desire to promote green transition of power production to limit the level of aid and other opportunities to provide investment aid for conversion to RES compared to today. It is both in the current rules and in the proposed draft already a requirement that one must not provide more aid than what is necessary to complete a project. This requirement prevents individual projects from becoming overcompensated. It is however a fact that some projects need more aid while others need less aid to be economically viable.

It is therefore the position of the Danish Authorities that the current maximum percentages for investment aid should remain at the current level as

a lowering of the percentages is likely to reduce the number of environmental projects which will be economically viable.

#### *8. Capacity mechanisms*

The Commission's draft on capacity mechanisms is an extension of the Council Conclusions of June 2013 on capacity mechanisms. The Danish authorities consider the electricity market as the right instrument for resolving issues relating to the relationship between consumption and production. Rising electricity prices as a result of lack of capacity will normally act as an incentive to ensure that new capacity is provided, and national capacity markets may have anti-competitive consequences.

With the introduction of payments for capacity one risks paying for capacity that could be dispensed with. There is on top of this even more transfers between consumers and producers.

It is recognized, however, that security of supply can be strained during certain periods in the electricity markets in parts of Europe and the Commission is therefore closely following the developments and assessing whether there is a need for new mechanisms, including community-based solutions to ensure the necessary capacity. If the capacity mechanisms are indispensable, it is crucial that they are designed on a common, harmonized EU basis as possible based on the principles of the internal market and ensuring effective competition.

It is essential to the Danish transmission system, that there is nothing impeding the transmission connections.

#### *9. The possibilities of granting aid for companies in the form of reductions or exemptions from environmental taxes*

The draft differentiates between taxes levied on energy products used for electricity production and other non-harmonised taxes which mean that the assessment of the necessity of the aid is different. (The output tax on electricity is a harmonised tax and therefore not included in the taxation of energy products used for electricity production). The Danish authorities find that in both situations the assessment of the necessity of the aid should be the same and prefer the assessment used in relation to other non-harmonised taxes.

The assessment used in the draft regarding taxes levied on energy products used for electricity production is based on the carbon leakage criteria which are used in relation to the ETS State Aid Guidelines. In relation to the ETS scheme it is relevant to look at the sector intensity of trade with third countries because the ETS quota price burdens all EU producers in the same way. However when it comes to taxes levied on energy products

used for electricity production and other non-harmonised taxes they are national taxes which burden the national producers, but not producers in other Member States or third countries. The relevant comparison when it comes to trade intensity is therefore both third countries and other Member States. National taxes on energy products for electricity production, which are non-harmonised, should consequently be treated the same way as other non-harmonised taxes and not be based on carbon leakage criteria, which have been designed for a harmonised EU scheme.

When it comes to assess the necessity of the aid in relation to other non-harmonised taxes specific in regard to energy products and electricity the current guidelines are referring the definition of energy-intensive business defined in article 17(1) of Directive 2003/96/EC. That definition should also be used in the draft.

It may also be a problem in relation to tax rules if the tax reductions to support environmentally friendly investments shall be assessed under specific sections of these guidelines for those technologies such as to support energy from renewable sources or cogeneration of heat and power. All tax rules shall be assessed according to the tax rules in the guidelines.