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EBA position on the [draft Guidelines on environmental and energy aid for 2014-2020](#)

Despite the EU's efforts and goals set for the internal energy market, European energy business is far away from being fully liberalised and the external costs are not internalised. Therefore, the full deployment of different renewable energy sources (RES) still requires national support schemes. Even though best practices should be promoted by the European Commission, certain flexibility should definitely be left for Member States to tailor their schemes to fit the national conditions. In addition, it is highly questionable to promote a support model, i.e. a technologically neutral bidding process (Paragraph 120 (a) of the draft Guidelines) that does not exist anywhere in the EU yet.

Traditionally the State Aid Guidelines should define the criteria to evaluate whether State aid to renewable energy sources (RES) is compatible with the internal market. However, in the current draft for revised Guidelines, they also comment on issues such as the design of national renewable energy support mechanisms (Paragraphs 110-137 of the Guidelines). According to the subsidiarity principle, such issues need to be handled in close cooperation with the Member States, the relevant Commission services and the involved stakeholders. In addition, **the Guidelines shall rely on past experience in order to improve them**. In the draft Guidelines, there are many elements that are currently not in place in any Member State being therefore highly questionable. On the contrary, the value of support mechanisms that have proven to be very effective in many EU countries, such as **feed-in tariffs must be allowed also in the future in order to ensure continued investment security**. **Furthermore, many paragraphs of the Guidelines contradict the European objectives in climate and energy policy as specified in the Renewable Energy Directive (2009/28/EC) and endanger market security and innovation.**

According to Article 194 of the Treaty on the Functioning of the European Union (TFEU), Member States have right to determine the conditions for exploiting their energy resources, their choice between different energy sources and the general structure of their energy supply. Therefore, the Guidelines shall not recommend to Member States to favour certain types of technologies and to limit energy production using biomass from operating aid (Paragraph 121(b)). Instead, as outlined in paragraphs 5-6 of the Guidelines, sustainable growth and resource-efficiency are particularly important for Europe. Bearing this in mind, the European Commission should rather consider that

production of gaseous biomass by anaerobic digestion is the technology which currently gets the most from organic wastes and crops, extracting the energy and recycling the nutrients and organic matter. Crops grown for biogas can be integrated into crop rotations which improve overall productivity of farming, including subsequent food crops. Digestate, the second product of anaerobic digestion, can significantly improve soil properties.

Regarding biofuels, the Commission should not rely on any draft legislation (the so-called iLUC proposal). It is still unclear how 'advanced biofuels' are defined at EU level. Biofuels that comply with current sustainability criteria in force, thereby contributing to the EU's climate targets and resource efficiency, should be allowed to receive aid.

The only support mechanisms specified as compatible for deployed technologies (that have according to the Guidelines a share of at least 1-3% in electricity production) are feed-in premiums (Paragraphs 120(c) of the Guidelines) and, in specific cases, green certificates. The French Court of Auditors (Cour des Comptes) recently criticised¹ tender procedures for three main reasons: firstly, tender winners are not always well justified: often technologies that already have reached a high level of maturity have been promoted; secondly, tenders are not always effective: the projects have not fulfilled the initial objectives and/or there have not been enough competitors; and thirdly, the consequences and local circumstances have not been taken into account. Especially in the case of bioenergy, the cost of using tenders to support electricity generation facilities, even if the production is carried out in co-generation, is too high in relation to the impact on local resources: small-scale projects that could be better adapted to local circumstances and feedstock availability tend to lose the bidding processes against large projects with larger administrative resources.

The success of the transition to renewable energy, however, often depends strongly on those smaller and mid-size projects, as they are the basis and the drivers for decentralised energy production. Therefore, small-scale installations, at least below 5 MWe1, should be exempted from the normal tendering procedures or they should at least have simplified and separate bidding procedures. Furthermore, the threshold of 1-3% share in electricity production at EU level which determines what is a deployed and what is a less deployed technology, is very low. Even anaerobic digestion would be with its 1.09% share at EU level a deployed technology although the development of the biogas industry is in most European countries only at the very beginning or has not even started yet. Therefore, EBA would propose to raise the threshold to at least 5%.

Many national support mechanisms currently in place in the Member States are not allowed under the new Guidelines. The prices of green certificates are to be determined by free market mechanisms and are not to be fixed in advance (Paragraph 127 of the Draft Guidelines). **The consequences of these draft Guidelines are disastrous for the development of renewable energy production and thus not acceptable. We would like to draw your attention to the following four points:**

1. Imposing specific support mechanisms is not constructive

- a. **It favours the currently cheapest technology without considering long-term sustainability of project performance and would thereby stall the innovation and development of a diverse range of technologies.**
- b. The new requirements **undermine security of investment** and discourage new investments – bidding processes are financially reasonable only in the case of large-scale projects.
- c. **A fully transparent, fair and robust internal energy market** needs to be in place before RES can fully participate and compete in the market in a level playing field and their support can

¹ Cour des Comptes: La politique de développement des énergies renouvelables : <http://www.ccomptes.fr/Publications/Publications/La-politique-de-developpement-des-energies-renouvelables>

be more market integrated. This market **does not yet exist**. Existing distortions like subsidies to fossil fuels and nuclear energy and benefits to incumbents must be eliminated first and external costs must be internalised.

- d. **Feed-in tariffs have been proven especially successful:** They attract investors and lead to unparalleled growth rates in the energy sector - as intended by the RES Directive. **Phasing out these feed-in tariffs would destabilise the whole market and the industry of renewable energy production with all connected industries that create local jobs and employ thousands of Europeans.**
- e. Due to the need of big administrative capacities in order to win tenders the introduction of feed-in premiums would **discriminate against small scale installations.**
- f. The draft does not mention any kind of grandfathering of existing support mechanism designs. If many national support systems would **have to be phased out abruptly, the confidence of investors would be shaken and legal and regulatory uncertainty with an increased risk of bankruptcies would result.**
- g. **Green certificates with a price left to be established by the market give low security of investment for producers of renewable energy.** Thus, the increasing development of the renewable energy market will come to a halt which is the exact opposite of the intentions expressed in the RES Directive.

2. Technology neutral support mechanisms do not encourage innovation and developing RES technologies

- a. Although suggesting the opposite, the concept of **'technology neutrality' in fact means maintaining existing distortions** that favour incumbent technologies. Technology neutral support mechanisms do not foster the deployment of emerging technologies.
- b. **Member States should be allowed to differentiate support mechanisms according to the development degree and characteristics of each technology** to ensure the deployment of a sufficiently broad portfolio of renewable energy technologies in the most cost effective manner.
- c. **Member States should be free to choose a diverse renewable energy portfolio**, including the support for less mature technologies for which they have the natural resources and necessary infrastructure.
- d. Support mechanisms will not become more cost-efficient by putting technologies with different specificities and at different stages of maturity in competition with each other, but rather by ensuring that **tailor-made approaches avoid over-compensation** and support the development of a wide set of technologies.

3. No promotion for nuclear energy!

EBA strongly welcomes the removal of nuclear energy from the supported energy technologies. Nuclear is by no means an infant technology, support is not justified as all EU objectives can be achieved thanks to other technologies which are safer, less expensive and more favourable for the environment. Nuclear energy has received state investment aid since decades: Already the existing support is unacceptable, further subsidies would be outrageous.

4. Focus on protecting investments from retroactive and abrupt changes

Diverse schemes across Europe have proven successful when they have been tailored to national circumstances and the prevailing financial situation. In this context, EBA would also like to call for further actions from the European Commission to reject any retroactive and abrupt changes to the national schemes jeopardising the competitiveness of RES. For example in Spain more than 30 new projects had to stop activities and another 40 on earlier stages were abandoned because of the Moratorium put in place for new RES projects in 2012. In the Czech Republic the government has decided to eliminate the feed-in tariffs and has publicly qualified RES support schemes as “the biggest fraud in the history of the Czech Republic” (President Zeman on 07.05.2013). Such statements and actions will clearly threaten the survival of the RES industry and may endanger the achievement of the national 2020 binding targets.

Conclusions

The European Biogas Association calls on the European Commission to develop the Guidelines in a way that all European states are allowed to keep their success models. EU rules that do not leave room for that are counterproductive and harm the sovereignty of the Member states’ energy policies. Thus, the current **draft has to be fundamentally amended**. Therefore we ask you kindly to **reconsider the draft and to amend it accordingly**.

About European Biogas Association (EBA)

European Biogas Association aisbl (EBA) was founded 3 February 2009 as an international non-profit organisation aiming at promoting sustainable biogas production and use in Europe. EBA’s membership comprises currently national biogas associations, institutes and companies from 25 countries. EBA unites a large number of the most experienced biogas experts in Europe and has highly experienced and skilled staff providing policy advice, know-how and information to promote beneficial legislation and framework conditions in the field of biogas.

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