



## *Renewable energy tendering from a State Aid perspective*

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# Agenda

- I. The basics of state aid law
- II. The EEAG 2014-2020: market integration and competitive bidding
- III. General obligation to tender state aid for renewable energy as of 2017
- IV. Exemptions from the general obligation to tender

## Definition of an aid

Article 107(1) TFEU: “[...] *any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market*”.

# Constituent elements

1	<p><b><i>“any aid in any form whatsoever”;</i></b>          The most popular forms of aid: grants; tax exemptions; guarantees; loans; tax deferrals</p>	
2	<p><b><i>“granted by a Member State or through State resources”;</i></b>          Imputable to the state and financed through state resources</p>	
3	<p><b><i>“which distorts or threatens to distort competition”;</i></b>          Actual or potential distortion of competition</p>	
4	<p><b><i>“by favouring certain undertakings or the production of certain goods”;</i></b>          Advantage: Market economy investor principle          Selectivity (selective measures v general measures)</p>	
5	<p><b><i>“in so far as it affects trade”.</i></b>          Cross-border effect</p>	

# Exemptions from the general prohibition of aid

**Art.107(2) TFEU**

Mandatory Exemptions (*“shall be compatible”*);

**Art.107(3) TFEU**

Discretionary Exemptions (*“may be considered to be compatible”*);

**Art.108(2) 3<sup>rd</sup>  
sentence TFEU**

Aid Exempted by the Council in exceptional circumstances;

**Art.109 TFEU**

*Block Exemption Regulations;*

**Art.106(2) TFEU**

*Services of General Economic Interest.*

# Procedure – obligations of Member States

Art.108(3) TFEU

1. notification obligation (“*The Commission shall be informed [...] of any plans to grant or alter aid*”);
2. stand-still obligation (“*The Member State concerned shall not put its proposed measures into effect until [...] a final decision*”).

# EEAG 2014-2020 – Key principles

**A**

Integration in the market

**B**

Introduction of competitive bidding

# EEAG 2014-2020 – Key principles

**A**

## Integration in the market (point 124 EEAG)

- the aid is granted as a premium in addition to the market price whereby the generators sell their electricity directly in the market
- the beneficiaries are subject to standard balancing responsibilities, unless no liquid intra-day balancing markets exist
- the scheme ensures that generators have no incentive to generate electricity when market prices are negative



# EEAG 2014-2020 – Key principles

## B

### Introduction of a competitive bidding process (point 126 EEAG)

- ‘competitive bidding process’ means a non-discriminatory bidding process that provides for the participation of a sufficient number of undertakings and where the aid is granted on the basis of either the initial bid submitted by the bidder or a clearing price. In addition, the budget or volume related to the bidding process is a binding constraint leading to a situation where not all bidders can receive aid
- if such competitive bidding processes are open to all RES generators, the Commission will presume that the aid is proportionate and does not distort competition
- these competitive bidding processes are only required for new installations. Installations that started works before 1 January 2017 and had received a confirmation of the aid by the Member State before such date can be granted aid on the basis of the scheme in force at the time of confirmation

# Transitional phase



**Transitional  
Phase**

In the years 2015 and 2016, aid for at least 5 % of the planned RES capacity should be granted in a competitive bidding process

# General exemptions



Competitive bidding is required, unless Member States can demonstrate that a bidding process would lead to an unsatisfactory outcome because:



only one or a very limited number of projects or sites would be eligible; or



a competitive bidding process would lead to higher support levels (for example due to strategic bidding); or



a competitive bidding process would result in low project realisation rates (avoid underbidding).

# “De minimis” exemption



Small installations or technologies in an early stage of development can also be exempted from participating in competitive bidding processes. The EEAG define small installations as those producing less than 6 MW of wind power (or 6 generation units), or 1 MW of power from other renewable sources, such as solar or biomass.

# Exemptions from technological neutrality in competitive bidding



The bidding process can be limited to specific technologies where a process open to all generators would lead to a suboptimal result.

Reasons for exceptions to technological neutrality include:

the long-term potential of a new technology; or

the need to achieve diversification of sources; or

network constraints and grid stability; or

system (integration) costs; or

the need to avoid distortions on the raw material markets from biomass support.

# Questions?

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