



Transparency Register: 54829912208-85

Draft Guidelines on environmental and energy aid for 2014-2020

CEDEC response to Consultation Paper

Brussels, 14 February 2014

General remarks

CEDEC welcomes the draft environmental and energy aid guidelines with a view to establishing clear rules for competition and to streamline state aid measures. Against the background of the objective of an integrated European internal energy market, the rules for public aid should offer a clear legal framework, which allows addressing specific market failure that are prevailing and stand against common EU objectives, such as the EU's 2020 climate and energy targets. State Aid therefore plays a crucial role. In this context, CEDEC regrets that the levels of aid intensities (Annex 1) have decreased from the previous State Aid guidelines.

Nevertheless, the energy mix remains in the competence of the single EU Member States. Hence, Member States must have some room for manoeuvre in defining and achieving their priorities, i.e. in designing their own support schemes. Therefore, State Aid Guidelines should not dictate common rules that stand in contrast or even interfere with existing EU legislation. They should instead set an efficient frame and underlying principles for tailor-made solutions in order to overcome certain market failures and create a level-playing field.

Summary of key points:

- Transparent and predictable regulatory frameworks are crucial for investors in the energy sector, such as local energy companies. Therefore, support for any kind of investment should not be subject to short-term political dynamics or even retro-active changes but provide long-term stability.
- No prescriptions on the choice of support instruments should be made on European level, given that the competence to define the energy mix remains with Member States.
- Cogeneration makes significant contributions to Energy Efficiency. The current threshold for operating aid to cogeneration makes it impossible for larger plants to receive aid and should therefore be adapted.



- The deployment of smart grids and decentralised storage at distribution level is indispensable for the integration of renewable energy, active demand-side participation and to guarantee security of supply in the future energy system. This should be reflected in the EEAG. The current emphasis on large-scale projects on transmission level should therefore be revised.
- CEDEC welcomes the inclusion of demand-side technologies in the measures for capacity mechanisms. In the accomplishment of generation adequacy supply and demand technologies should be put on equal footing.

5.2 Aid to energy from renewable energy sources

CEDEC shares the European Commission's view that support to renewable energy is helpful to the deployment of these technologies and to the accomplishment of the EU's 2020 targets and the ultimate objective to reduce the emission of greenhouse gasses by 80-95% in 2050.

In the absence of a level playing field between generation technologies, missing internalisation of external costs of technologies and non-economic barriers prevailing, **CEDEC has been actively promoting well-targeted, predictable and technology-specific support schemes for renewable energy in order to reach the EU's 2020 objectives at lowest cost.** In this context, CEDEC refers to the guidance given in the European Commission communication on optimising public interventions (Com(2013)7243) and appreciates the best practice examples given. As rightly established in this guidance, a certain convergence of support schemes is desirable and actually becoming a reality; however, there is no one-size fits all model for Europe's still diverging energy markets.

In this context, it is welcomed that Member States will also in the future have a choice between investment aid and operating aid.

CEDEC acknowledges that the State Aid Guidelines are only applicable for new installations, avoiding detrimental effects of retro-active measures on investments already made.

a. Investment aid

The application of general rules for the granting of investment aid is a positive signal for investors. Investment aid typically only has a one-time effect on the market and does not bear the risk of durable distortions.

b. Operating aid to RES

Free choice of support instruments

CEDEC generally supports a market for and the system integration of renewable energy sources. In a future system that will be largely based on RES, these technologies should take system and market responsibilities.



At the same time, the energy mix remains in the competence of EU Member States. As a logical consequence, Member States should also have some freedom to design their own support schemes, which contribute to the desired goals.

Hence, Member States shall also in the future be allowed to design support schemes of their choice for all RES technologies, to arrive at a technology-diversification which allows exploiting all resources available to them. This pluralism of support instruments is also laid down in the applied legislation in this area, Directive 2009/28/EC, Art. 2 (k), defining support schemes as : “any instrument, scheme or mechanism [...] including investment aid, tax exemptions [...] green certificates, and direct price support schemes including feed-in tariffs and premium payments.”

Therefore, while **CEDEC agrees that support schemes should be aiming at a system integration of all energy sources, we do not support the absolute limitation to pre-defined support schemes** as currently laid down in the draft state aid guidelines.

Paragraph 118: Opening of support schemes to other EEA countries

The measures for the opening of support schemes to other EEA countries are appropriate. The energy mix remains within the responsibility of single Member States.

Paragraph 119: Distinction deployed vs. less-deployed:

Considering the very different development stage of single RES technologies, CEDEC supports a distinction between more and less *mature* technologies. However, CEDEC believes that the classification between *deployed* and *less-deployed* technologies based on the threshold of 1-3% of the European electricity share seems inadequate to measure their eligibility for aid. First of all, the competitiveness of a specific RES technology is largely location-specific and varies according to the abundance of resources, such as wind and solar radiation. Secondly, even where certain RES technologies may be cost-competitive with conventional technologies, many market and administrative barriers remain for producers of RES in a system that has been created around the needs of large, centralised power plants. Hence, the share in the European electricity mix, in CEDEC’s view constitutes an inadequate indicator for the aid eligibility.

Paragraph 120: Deployed technologies

Based on their right to determine their own energy mix and in order to arrive at a technology-diversification which allows exploiting all resources available to single Member States, CEDEC has been actively promoting the use of technology- and segment-specific support schemes. Especially from an electricity grid perspective, a certain mix of technologies with complementing outputs can be needed to achieve a secure and reliable energy supply.

In this context, the rules formulated in paragraph (120a&b) seem unclear. While it seems that a general technology-neutrality is stipulated in (120a), exemptions to ensure technology diversity may

be made, with a minimum number of technologies to be supported set, without pre-defining these (120b).

CEDEC rejects the principle of technology-neutrality for RES support, as this predictably will lead to only the most competitive technologies deployed and a stop of technology development for currently less mature technologies. Moreover, technology-neutrality bears the risks of overcompensation of more mature technologies and is hence not cost-efficient.

In this regard, **CEDEC insists that Member States must have the right to pre-define the technologies to be supported** and that no discrimination within the same technology category is admissible. Moreover, Member States should be able to set different support levels by technologies in order to avoid windfall profits for more competitive technologies.

Paragraphs 120 d and 121c: Standard balancing responsibilities for RES technologies

CEDEC agrees with the principle that large-scale producers of electricity generated from renewable should be subject to standard balancing responsibilities. In the formulation of the current text however, the addition “where competitive intra-day balancing markets exist” is not clear, as market structures in Europe still vary a lot. CEDEC therefore suggests to delete this addition.

Paragraph 121: Less deployed technologies

Also for less deployed technologies, a limitation of Feed-in premiums as only eligible support instruments is seen critically. While a gradual introduction to the market for RES technologies is desirable as they reach competitiveness, **the choice of the specific instrument should be left to the Member States.**

Paragraph 121a: Update of production cost

With regard to the review of production costs, in CEDEC’s view, this should be time – rather than capacity-based, as this will give much more certainty and predictability to investors. However, this timeline for a review should be 12 instead of 6 months to ensure a smooth functioning of the market and gives more security for investors based on the lead times of projects.

Paragraph 123 and 131: Small-scale installations

CEDEC welcomes the fact that small-scale installations are considered in a differentiated manner when it comes to support schemes for RES.

With growing shares of smaller-scale installations, it is desirable that also small-scale installations take system responsibility to a certain extent. Where a direct marketing responsibility cannot be carried out by single operators (i.e. households) special service providers can fill this gap.

In this regard, the specific thresholds for wind turbines under 5 MW or 3 generation units might undermine the integration of renewable energies into the market. Since the construction of wind turbines of 7 MW is already possible today, wind farms with a capacity of up to 21 MW might continue to receive feed-in tariffs. The scheme could also lead to wind farms being divided into 5 MW parts by connecting each of these units to a separate network connection point. In any case, the specific threshold for wind energy has the effect that feed-in premiums remain a common form of operational aid for this kind of technology, which is not in line with the overall intention of the EEAG.

Aid to existing biomass plants after plant depreciation

According to the current draft operating aid to biomass plants after plant depreciation and to existing CHP plants may only compensate the gap between 'variable operational costs' and market price. We believe that this new wording will not support the concerned installations sufficiently, as it will cover only a fraction of total costs. Thereby also with operational aid concerned plants would operate at a permanent loss leading to their decommissioning. The text should retain the provisions of the 2008 Guidelines, which considers 'production costs'.

5.3 Energy Efficiency Measures including cogeneration and district heating and district cooling

a. Energy Efficiency

CEDEC explicitly welcomes that state aid for the conduct of energy audits can be granted to small- and medium-sized enterprises. Energy audits as systemic procedure for the obtainment of a load profile represent a crucial step for the exploitation of economic energy efficiencies.

Against the background of the common landlord-tenant dilemma, CEDEC appreciates that in the future financial instruments for the energetic renovation of buildings may be recognized as state aid (145-146). It should be clarified however, that state aid may be granted for the renovations improving the energy performance of both the outer shell of a building as well as for the heating systems. Both need to be implied in a renovation for improving the total energy performance of a building.

In order to achieve an optimal result of a renovation, the measures regarding the outer shell and the heating system need to be well coordinated. Buildings with a well-insulated outer shell have a lower heat demand than non-insulated buildings. Moreover, modern heating system, such as high-efficient gas boilers have an efficiency factor of ca. 95% (compared to older gas boiler from the 1980s which usually have an efficiency factor of 80%).

b. Cogeneration

CHP and district heating technology form an important part of the solution aimed at achieving the targets of the European strategy in the areas of energy and the climate. As was determined in the

recently adopted Energy Efficiency Directive: *"High-efficiency cogeneration and district heating and cooling has significant potential for saving primary energy, which is largely untapped in the Union."*

Cogeneration plants meet the demand for district heating and therefore make a considerable contribution to reducing the emission of gases such as CO₂, SO_x and NO_x, as well as the concentration of fine dust particles. The amount of primary energy consumed can be reduced significantly by co-generation of heat and power. CHP plants are also an indispensable part of safeguarding the security of supply.

Thresholds for operating aid for cogeneration

The objective of the notification process is to investigate the cases of aid that have the potential to distort the market the most. The capacity of an installation is not the most appropriate indicator of its potential for market distortion upon receipt of state aid. What matters is the amount of aid actually granted. A plant with a maximum capacity of below 125 MW (for RES) and 200 MW (for CHP) receiving a large grant would not be subject to individual notification in contrast to large plants, even if they received a small grant.

In order to resolve this contradiction, aid measures related to CHP based on notified and approved aid schemes should in general not require a detailed assessment regardless of any threshold.

Alternatively a more suitable indicator for the distorting effect of state aid would be the total amount paid per year to an installation or the amount of support received per MWh.

CEDEC regrets that the particularly local characteristic of cogeneration is not sufficiently taken into account. This applies specifically to paragraph (151), in which the applicability of rules similar to those for deployed RES technologies is stipulated. This implies a competitive bidding process for new cogeneration plants. In the case of a technology faced with very different local cost structures (due to heat sinks), local conditions and demand structure, this rule seems counter-productive. The specific characteristics of cogeneration should be taken into account when defining rules for granting of state aid. This applies equally for the envisaged rules for existing cogeneration plants in (152).

Incentive effect and counterfactual scenario for operating aid

The provisions concerning the incentive effect and the counterfactual scenario are with the exception of (65) based on the logic of investment aid. For operational aid the incentive effect should be verified by comparing the intended behaviour with receiving the aid and without in the same year.

Considering the counterfactual scenario for CHP installations, companies only ask for alternatives that meet the same (energy) demand but not necessarily those that have the same production capacity or the same technical features, as specified in footnote 42.

Reference scenarios for CHP should therefore not necessarily have to involve the construction of a new boiler facility to generate heat and (separately from this) a condensation power plant (to generate electricity). Reference scenario should permit the buying in of electricity in such cases.

5.6 Aid in the form of reductions in (or exemptions from) environmental taxes

CEDEC opposes the intention of the EU Commission to grant aid in the form of tax reductions from harmonized environmental taxes only to companies in pursuit of one of the activities defined in Annex 2 of the Guideline for certain aid measures in connection with the scheme for greenhouse gas emission allowance after 2012 (Commission Communication 2012/C158/04). This is among other things, contrary to Article 17 of Directive 2003/96 (Energy Tax Directive - ETD) according to which an energy-intensive business is one in which: *“where either the purchases of energy products and electricity amount to at least 3,0 % of the production value or the national energy tax payable amounts to at least 0,5 % of the added value.”*

The scope and definitions of the Energy Tax Directive should not be limited by the EEAG. This compromises the right of the Member States to adopt energy tax breaks for companies. It is also to be noted that as part of the Energy Tax Directive, Member States have the option of, under defined conditions, to fully exempt undertakings from the energy tax (Article 14-16 of the ETD).

Some Member States, such as Germany, have made use of these provisions. According to Article 14 para 1 lit. a Energy Tax Directive, it is left to Member States to decide on environmental grounds, whether the energy products/electricity used to produce electricity, should be taxed for environmental reasons. However, Member States may, if they wanted to tax in these cases, differ from the minimum rates of the Energy Tax Directive.

The requirements in paragraph (169) in combination with paragraphs (171) to (174) of the draft guidelines for instance, do not sufficiently address the mandatory exemption in Article 14 para 1 lit. a Energy Tax Directive and the optional possibility of taxing the input for the generation of electricity. It is expected that in the future the Commission will apply the standard review of paragraphs (171) – (174) of the draft guidelines, and tax exemptions will in this case fail.

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

CEDEC agrees with the European Commission that the cost of the energy transition and in particular the promotion of renewable energy is to be shared equally by all energy consumers (paragraph 181). CEDEC further acknowledges that the competitiveness of European industry remains a main concern for the European economy and employment, and therefore exemptions from the costs stemming from the promotion of RES need to be made for selected industries. Nevertheless, **exceptions from contributions to the support of RES should be narrow and clearly defined.** For reasons of legal certainty and of the unity of the internal market, the European Commission should establish uniform criteria for assessing the eligibility of exemptions (paragraph 184).

In order to grant privileges only to companies that are energy intensive and subject to international competition, from CEDEC's point of view the thresholds should be set at higher levels than currently suggested. In particular, the threshold for export orientation of a business should be raised: 10% appear as rather low and would provide for too many exemptions, for which the costs would eventually be carried by other consumer groups such as SMEs and households.

In paragraph (186a) a clarification should be added that this requirement only applies when a compensation for the costs of the expansion of renewable energies is granted, not if an exemption from the costs is granted.

It is also to be welcomed that a complete exemption under the draft guidelines should no longer be possible, but a minimum contribution from exempt businesses is to be provided (paragraph 186 b).

5.8 State Aid for energy infrastructure:

CEDEC welcomes the inclusion of energy infrastructure as well as the aid eligibility for 100%. In the transition towards a sustainable energy system largely based on renewables, the replacement of aging infrastructure, reinforcement and extension of lines are indispensable.

With more than 80% of renewable energy installations connected to the distribution grids of low- and medium voltage level, it is estimated by the IEA that by 2020, two thirds of all infrastructure investments will go into distribution rather than transmission lines. With increasing decentralisation of energy supply, distribution networks are becoming the true backbones of Europe's energy system. Especially the **deployment of smart distribution grids, essential for the integration of renewable energy, active demand-side participation and security of supply** is often not adequately incentivised by the incentive regulation currently in place. In the absence of innovation-friendly regulatory frameworks that promote investments in smart technologies, CEDEC appreciates that State Aid for energy infrastructure is considered a way to overcome this problem.

However, CEDEC sees the special emphasis put on Projects of Common Interest (PCIs) critically. The criteria spelled out in the TEN-E regulation for PCI are largely too high to be met by the most small-to-medium-sized DSOs in Europe (number of customers connected, cross-border aspect, TSO involvement). This is reflected in the first PCI presented in late 2013. From the 248 PCIs, only two projects are smart grid projects on distribution level. The list stands in stark contrasts to the investment needs in Europe, and therefore projects not mentioned on the PCI list should not be discriminated.

New: Aid for decentralised storage technologies

The guidelines should be supplemented by a section on aid for storage technologies falling out of the provision of 18ff (110kv and directly connected to transmission lines). The expansion of renewables, the declining economy of conventional generation and the foreseeable future decommissioning of conventional base load capacity in energy production make it necessary to maintain the security of supply by making energy production and consumption more flexible. Storage technologies can contribute to the optimization of system development and will play an essential role in energy supply in the medium- to long-term especially as they are low-carbon or even carbon-neutral technologies.

It should therefore be specified that a technology-neutral funding for research and a technology-specific funding for deployment of storage technologies, is compatible with the internal energy market.

For operators of storage facilities as providers of secure capacity to come into the market, a level-playing field must be provided. Only a few storage technologies are mature today, with a variety of technologies currently in the development or demonstration phase. Therefore, the urgent goal of the research and development work - against the background of increasing deployment rates of variable RES technologies - should be the basis for innovation and necessary reduction of costs (i.e. through mass production) to allow for a full competitiveness of storage technologies with other flexibility options.

The necessary research into the technology options will not take place through market mechanisms alone. There is a market failure which can only be counter-acted by a targeted support. This should be technology-neutral, and designed in such a way that an introduction to and an integration into the market can be gradually achieved.

5.9 State Aid for Generation Adequacy

The European Commission's approach to including Generation adequacy in the State Aid Guidelines is welcomed. Committed to the objective of completing the Internal Energy Market, CEDEC agrees with the view that no measures should be taken that compromise this accomplishment.

CEDEC also agrees that potential problems of generation adequacy need to be carefully analysed, taking a regional or even European rather than a purely national approach. Developments such as market coupling and the existence of effective intraday markets, the share of variable RES in the energy, interconnections, and demand-side participation need to be taken into account, as spelled out in paragraphs (207)-(209).

Paragraph 211: Inclusion of demand-response

CEDEC very much agrees that both supply as well as demand-side options, such as demand - side management programmes as well as storage operators shall be equally considered in generation adequacy measures, putting them on equal footing in their possible contribution to generation adequacy.

Paragraph 212: investments in generation from fossil fuels

This paragraph would lead to potentially higher overall system costs. The cost-efficient supply of necessary capacity, e.g. through life extension investments in existing older power plants, is impossible with this paragraph. Such power plants will, e.g. in the case of a "lack of peak-load capacity", only be a few hours of the year in actual operation, and even in these hours represent only a small part of the whole capacity currently producing. The sentence also stands in contrast to the general technology-neutral approach that should be taken to generation adequacy measures.