



**Danish comments to the public consultation for the revision of the Guidelines on State aid for Environmental protection and Energy 2014-2020**

**Date**  
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The Danish Government welcomes the opportunity to comment on the European Commission's public consultation for the revision of the guidelines on State aid for Environmental protection and Energy.

The Guidelines on State aid for Environmental protection and Energy (EEAG) has played and will continue to play an important role, not only in relation to the regulation of the internal market and ensuring fair competition, but also in relation to supporting the European Union's energy and climate targets and objectives.

It is therefore especially important that the upcoming revision of the EEAG and GBER take into consideration that the European Union as a whole has set a target to reach climate neutrality by 2050 and has adopted ambitious energy and climate targets for 2030. The European Council agreed as late as in December 2020 to increase EU's climate target for 2030 to at least 55 percent. It is therefore necessary to supplement the European Green Deal and the upcoming "fit-for-55-package", which will focus on implementing the new climate target into relevant sector legislation, by a strengthened, modernized and future proof state aid legislation that can support the green transition in the Member States and ensure the necessary investments in renewable energy, including new renewable energy technologies.

The Danish Government would also like to refer to its previous comments from September 2019 to the revision of the guidelines as part of the fitness check-exercise.

*The current EEAG*

The Danish Government is of the opinion that the key principle of the EEAG concerning aid for energy from renewable sources should be maintained, thus establishing that aid as a main rule only can be granted in a competitive bidding process on the basis of clear, transparent and non-discriminatory criteria, unless certain explicitly described circumstances are in place, cf. Article 126. Technology-neutral bidding processes are future proof and key in the green transition of the energy sector. The existing option to limit a bidding process to specific technologies should only be maintained as long as an open process, which includes all technologies, would lead to a suboptimal result.

*Cross-border opening of aid schemes*

Even though cross-border opening of aid schemes could increase e.g. the competition and minimize the risk of competitive advantages to firms located in Member States with greater financial resources, the disadvantages would be even larger. Not least, the complexity of constructing such aid schemes, the challenges attached to monitoring, enforcement etc., but also – and most importantly – the risk



this could cause for the green transition and future deployment of renewable energy in Member States, if Member States were forced to open aid schemes and not was able to decide on a fully voluntary basis where new renewable energy should be deployed.

The Danish Government will strongly recommend that the cross-border opening of aid schemes will continue to be voluntary, just as it is already stated in the Directive on Renewable Energy (2018/2001/EU). It will be possible to ensure the competition and minimize any risks attached hereto with other measures, e.g. by public tenders and competitive bidding processes.

#### *Alignment with the revised Renewable Energy Directive*

With the revised Renewable Energy, which enters into force in 2021, the legislation concerning renewable energy has been brought up to date, and a number of new requirements to renewable energy technologies, criteria etc. have now been included in the EU legislation. This “modernisation” of the directive can raise questions whether the EEAG and GBER still are satisfactory aligned with the rules on renewable energy.

- *The sustainable criteria:* Denmark would appreciate further guidance on possible connections between the sustainability criteria in the Renewable Energy Directive (RED II) and state aid regulation. There is a need to clarify that it will be possible for Member States to make use of additional national sustainability criteria for e.g. biomass and biogas used for electricity, heating and cooling, industrial purposes, upgrading for injection in gas grid, and link the compliance of the national sustainability criteria to existing aid schemes.
- *Guarantees of origin:* The extensive use of guarantees of origin in RED II raises questions about how to implement these in connection with state aid regulations. According to RED II Article 19 (Guarantees of Origin), Member States shall ensure that when a producer receives financial support from a support scheme, the market value of the guarantee of origin for the same production is taken into account appropriately in the relevant support scheme. It is foreseen in the implementation of RED II, including Article 19, into Danish law that most of the future financial support to new renewable energy production capacity will be granted through a tender procedure. Therefore, the market value of the guarantee of origin will be taken into account. We expect that the future state aid framework will embrace this approach.
- *Biofuels:* The current scope and definitions in the guidelines should be considered in order to accommodate e.g. renewable liquid and gaseous transport fuels of non-biological origin and recycled carbon fuels. In connection with these fuels, it should be considered to include not only production, but also conversion of energy. In general, it is from a Danish point of view still necessary, to carry on the absolute ban on aid for food-based biofuels, which enters into



force from 2021. However, when it comes to supporting the use of instruments as CO2 taxes which have shown to be a valuable supplement to reach the EU's renewables energy targets for the transport sector, the rules should be made more flexible, e.g. by, to a larger extent, allowing for aid for biofuels covered by a supply or blending obligation.

#### *Future proof guidelines*

The speed at which technologies develop underlines the need to try to future proof and include further technologies, not only in the EEAG, but also in the GBER, as the time factor is very important in relation to the development of new schemes. In this respect, Denmark would especially highlight the following:

- *Power-to-X (PtX)*<sup>1</sup>: The rules on state aid to PtX based on electricity from renewable energy sources are not sufficiently clear in the EEAG. However, in the 2020 hydrogen strategy for a climate-neutral Europe, the European Commission highlights the need for a revision of the state aid framework as well as the current RED II. It is important that PtX (based on renewable hydrogen) is handled by EEAG, and not only by the rules relating to IPCEI-projects. Producing fuels by converting renewable electricity require large amounts of renewable electricity from e.g. wind turbines or solar panels. The consumption of electricity for production of hydrogen and other fuels is considered flexible and can help provide flexibility on the consumption of electricity that better matches the volatile nature of electricity production on wind and solar. A clarification in the EEAG on the method to document that electricity provided through the grid qualify as renewable would be most helpful and could enable to ensure that the rapid growth in renewable capacity is met by the needed flexible demand.
- *Methodology on calculation of renewable energy*: In RED II Article 27, the Directive stipulates forthcoming detailed rules by which economic operators are to comply with the proportion of renewable energy for electricity in producing PtX. The guidelines should include this methodology in how to calculate the renewable energy part of aid to PtX.
- *Conversion and storage facilities for renewable energy*: There is an increasing need to demonstrate and promote the market penetration of industrial scale solutions to convert and store “excess” electricity produced from natural fluctuating renewable energy sources as wind and solar in order to balance - or “bridge the gap” - between electricity production and consumption/end-use. The

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<sup>1</sup> *Hydrogen PtX technologies*: PtX is a general term for a wide range of fuels and other products produced by electricity. Common for all of the PtX products are that they include hydrogen produced by electrolysis. Renewable hydrogen can be used directly for industrial processes, transport etc., or be used for production of synthetic fuels and gasses, methanol or ammonia for shipping as mentioned in the European Commission's hydrogen strategy for a climate neutral Europe, production of jet fuel, electro-methane for the gas system or products as fertilizers for agriculture.



development of flexible and cross-sectorial solutions to handle this challenge is crucial as a *prerequisite* for the green transition of the electricity supply both in physical and - not least - economical terms. The use of PtX-technologies as the production and storage of hydrogen is one example. As the market failure is the risk associated with testing and applying of new and innovative conversion and storage solutions in the sector, this challenge should be embraced by the future state aid framework by allowing investment grants inter alia. Some articles in the present GBER seems to contain conditions that are not fully compatible with the aim to promote the mentioned technologies especially when they have reached a state of maturity that is beyond the coverage of Article 25 regarding R&D and Innovation.

- The GBER is a very useful instrument to designing and implementing aid schemes within a reasonable period. In order to make the regulation even more applicable to the needs of the green transition it would be useful to supplement the current regulation with possibilities that can accommodate new technological developments even better. The possibility of higher aid intensity to micro and small companies – including marketing expenses – would be highly relevant in order to support the development of innovative energy technology. Furthermore, it should be considered to raise the notification thresholds in order to alleviate administrative burdens.

#### *Other important aspects*

Besides, the general viewpoints concerning key principles in the EEAG that should continue, the alignment with RED II and ensuring a future proof legislation the following modernisation aspects – which are important to take into consideration when the EEAG and GBER are revised – should be highlighted as well.

- *Coherence with the Clean Energy for All package and the European Green Deal:* The Clean Energy for All package contain articles that could have implications for state aid, e.g. capacity mechanisms and the more general need to ensure provision of flexibility from a security of supply perspective and measures to underpin electrification across various sectors. A more general clarification of the relationship between the EEAG and the legislation covered by the *Clean Energy for All* package as well as measures covered by the *European Green Deal* is recommended.
- *EEAG and GBER's coherence with the sector regulation on energy:* It is suggested to align the state aid rules with other sector regulation on energy, including the Energy Efficiency Directive, the Directive of Energy Performance of Buildings, and the Renewable Energy Directive, to support the principle of energy efficiency first.
- *Bidding process for biogas:* Guidance in the new EEAG with regard to promoting biogas and methane produced by electrolysis and based on renewable energy



sources in a tender scheme for renewable gases would be appreciated.

- *GBER Article 41*: The article covers investment aid for the promotion of energy from renewable sources. However, the article seems only to be applicable to *production* of renewable energy. The conversion and storage technologies do not concern the energy production itself, but support the general deployment of renewable energy. In this way, these technologies also promote the production of primary energy from renewable energy sources. If this interpretation is correct, it is proposed to include aid for conversion and storage technologies in the future within GBER section 7 “Aid for environmental protection” or directly in Article 41.
- *GBER Article 48*: The above mentioned projects might fall within the scope of energy infrastructure as defined in Article 48(2): “*Electricity storage, defined as facilities used for storing electricity on a permanent or temporary basis in above-ground or underground infrastructure or geological sites, provided they are directly connected to high-voltage transmission lines for a voltage of 110 kV or more*”. However, as the relevant projects will not in all cases be directly connected to high-voltage transmission lines the present definition might be a “bottleneck”. It is in general recognised by the Commission that a more “local” approach to match electricity production versus end-use can be to the benefit of the overall electricity system as well as to the rural development. In addition, there might also be a challenge in fulfilling the condition set in Article 48 (3), which states that: “*The infrastructure shall be subject to full tariff and access regulation according to internal energy market legislation*”. The different regulations should therefore be aligned to promote the market penetration of the appropriate storage and conversion technologies.
- *Conversion from renewable sources to renewable sources*: It would be highly appreciated if possibilities for Member States to provide state aid within the scope of EEAG and GBER for conversions from one renewable energy source to another renewable energy source that is considered more beneficial to the environment or climate e.g. with regard to CO<sub>2</sub> reductions is clarified.
- *Energy Efficiency Directives Article 7 and CO<sub>2</sub> reductions*: It seems unclear whether-and-how Member States are to reduce the reported savings coming from planned subsidy schemes for free-rider effect, when these subsidy schemes constitute state aid, and therefore comply with the provisions of GBER regarding incentive effect. There is possible a conflict between a correction for free-rider effect, and meeting the provisions of the GBER regarding incentive effect of the aid. Further guidance within the GBER would therefore be appreciate on how to operate safely in accordance with both sets of rules.
- *Inserting a transition period for already approved aid schemes*: It is important that the revised guidelines contain a proper transition period as regards aid schemes that has been approved on the basis of the present guidelines and



requirements. The purpose behind this will be to ensure that already approved aid schemes which still fulfil the general criteria for what constitutes legal state aid and which still is considered important for the green transition and the continued efforts for reducing greenhouse gas emissions could be prolonged despite the approval has been made according to the “old” requirements.

*Concluding remarks*

In conclusion, the Danish Government finds it of great importance to make sure that the EEAG and GBER in the future are not only strengthened, modernised and able to handle new technologies as long as they are developed, but also continue as the main purpose to support the European Union’s ambitious climate and energy policy.