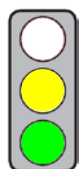


KEY ISSUES

Objective of the Communication: The Member States are to arrange their support for renewables in such a way that there is no contradiction with the EU's objectives on energy policy and the internal market.

Parties affected: Power suppliers, entire economy.



Pro: (1) The fact that the support for existing installations will not be changed retrospectively is consistent with the ban on retrospective legislation applicable under the Rule of Law and prevents the credibility of the state incentive system from being undermined.

(2) The degressive elements of the support systems and the change from state guaranteed feed-in tariffs to feed-in premiums and quota models determined by competitive tenders, limit overcompensation to plants.

(3) As a result of European coordination of renewables support, competition in the internal market will be strengthened between locations and technologies.

Contra: Giving long-term preferential treatment to non-competitive small operators by way of guaranteed feed-in tariffs results in inefficiencies.

CONTENT

Title

Staff working document SWD(2013) 439 of 5 November 2013 on the **Guidance for the design of renewables support schemes**

Communication C(2013) 7243 of 5 November 2013 on **Delivering the internal electricity market and making the most of public intervention**

Brief Summary

In the absence of any indication to the contrary, references relate to the Staff working document SWD(2013) 439.

► **Overview: Four Guidelines and accompanying Communication on intervention by Member States in the internal electricity market**

- In order to keep various types of intervention by Member States in the electricity market to a minimum, the Commission has drafted four non-binding guidelines in the form of recommendations for “best practice”:
 - Guidance on generation adequacy in the internal electricity market [SWD(2013) 438],
 - Guidance on the design of renewables support schemes (Renewables Guidelines) [SWD(2013) 439, see this [cepPolicyBrief](#)],
 - Guidance on the use of renewable energy cooperation mechanisms [SWD(2013) 440 and 441] and
 - Guidance on state intervention to increase demand side flexibility [SWD(2013) 442].
- The guidelines are explained in more detail in Communication C(2013) 7243.

► **Context and objectives**

- The Renewables Guidelines are intended to contribute to the completion of the internal electricity market and to achieving the EU's energy policy objectives. These objectives include [C(2013) 7243, p. 2]
 - a secure energy supply at “competitive” prices,
 - climate change targets by 2020 (see [cepAnalysis EU Energy Policy](#), p. 10 et seq.),
 - renewables development targets (Renewable Energy Directive 2009/28/EC, Art. 3 (1), Annex I Part A, see [cepPolicyBrief](#)) and
 - increasing energy efficiency.
- Public intervention in the energy sector may be necessary to [C(2013) 7243, p. 5]
 - secure a “level playing field” in the EU,
 - overcome “market failures” and
 - foster technology and innovation.
- Public intervention should be designed so that [C(2013) 7243, p. 7]
 - interventions are coordinated EU-wide,
 - distortion of competition is largely avoided and
 - it is restricted in length to the period of the problem to be solved.

► **Principles in the case of support for renewables**

- The Commission regards state intervention to support renewables as justified because the energy markets will not be able to generate their “socially and macro-economically desirable” levels in the near future [C(2013) 7243, p. 15].
- With renewables taking up a growing share of energy production,
 - production and investment decisions in the renewables sector should be increasingly assigned to market players in order to avoid over-compensation,
 - support for renewables should be more strongly based on the EU emission trading system so that support decreases when the CO₂ certificate price rises [C(2013) 7243, p. 15 et seq.],
 - “healthy competition” should be achieved between operators, locations and technologies [C(2013) 7243, p. 16] and the Member States permitted to undertake technology-specific support e.g. in the form of parallel quotas for different technologies (“technology banding”) in order to guarantee a broad mix of technologies (p. 10).
- The best possible potential for reducing the cost of installing power generating plants based on renewables should be considered by
 - using “automatic degressive elements” when setting support levels so that support levels for new plants decrease automatically each year (p. 20) and
 - limiting the duration of support to a uniform number of years or full-load hours (p. 21); the Commission mentions periods of 10 and 15 years without giving any further clarification.
- In order to guarantee investment security, existing commitments on renewables support cannot be changed retrospectively (p. 5).

► **Europeanisation of renewables support**

- The Commission supports a “convergence” of renewables support in the EU regarding
 - the type of support system
 - the duration of support and
 - the calculation of the costs of renewable power plants.
- In order to make better use of the opportunities for a cost-effective development of renewables over the whole internal market, more Member States should cooperate in renewables support by way of “cooperation mechanisms” (Art. 6 et seq. Renewable Energy Directive 2009/28/EC).

► **Comprehensive replacement of guaranteed feed-in tariffs with feed-in premiums**

- The Commission favours using the guaranteed feed-in tariff for power from renewable sources, which is used by many Member States,
 - only for small plants or for technologies still in the development stage and
 - otherwise in future replace it with a remuneration model where the producers market their power themselves and receive a premium in addition to the market price (“feed in premium”) (p. 8 et seq., p. 12 et seq.).
- The feed-in premium is currently either
 - fixed in advance (ex ante) or
 - floating, whereby it changes at specific intervals so that the fluctuations in the market price for electricity are at least partially compensated for.
- The Commission recommends that the feed-in premium (p. 9)
 - is only paid when the system price is positive and below a specified upper limit,
 - is determined by competitive procedures - particularly tendering.

► **Quota model**

- As another possibility, in addition to feed-in premiums, the Commission favours the quota model. This obliges energy suppliers to hold certificates confirming that a specific statutory proportion of the electricity supplied comes from renewable sources (see [cepAnalysis Europeanise Renewables!](#), p. 21 et seq.).
- The trade in certificates between renewables producers and electricity producers will result in
 - renewables producers having to become more market-oriented (“more market exposure”); competition between the renewables producers will increase and
 - the revenue of the operators of renewable power plants will become less secure by comparison with the guaranteed feed-in tariff so their capital costs will increase.
- The Commission recommends that
 - sufficient penalties are brought in for failure to fulfil quotas (p. 10),
 - the quotas to be fulfilled are fixed on a long-term and transparent basis in order to increase investment security (p. 11).
- Minimum certificate prices may, according to the Commission, reduce the risk for operators of renewable power plants.

Statement on Subsidiarity by the Commission

Although, according to the Commission, the support policy for renewables can, in principle, be determined at regional, national or local level, the Commission calls upon the Member States to take an EU-wide approach in order to avoid distortions of competition in the internal market.

Policy Context

Under the Renewable Energy Directive (2009/28/EC, see [cepPolicyBrief](#)) the proportion of the overall amount of EU energy consumption provided by renewable energy must increase to at least 20% by 2020. In this regard, the Member States are obliged - in accordance with their individual potential for using renewables - to obtain a specific proportion of their final energy consumption from renewables ("effort sharing"). The Commission has already referred to the need for reforms in renewables support in the Communication "Renewable Energy: a major player in the European energy market" [COM(2012) 271, see [cepPolicyBrief](#)] and, in the Communication "Making the internal energy market work" [COM(2012) 663, see [cepPolicyBrief](#)] proposed an action plan in which the renewables guidelines were announced. In addition, the Commission's Directorate General for Competition submitted draft binding guidelines (see [Call for consultations](#) dated 18 December 2013) under which it wants to assess whether state aid in the environment and energy sector, for the period 2014 to 2020, is compatible with EU competition law. In this context, EU-wide standard criteria will be established for the assessment, under the law on state aid, of national rules on renewables support.

Options for Influencing the Political Process

Directorates General: DG Energy

ASSESSMENT

Economic Impact Assessment

Ordoliberal Assessment

In principle, the share of renewables in the overall energy mix of the Member States should not be determined by a policy decision but by competition, taking account of the climate-policy instruments, in particular EU emission trading rights. It is also questionable whether there is a socially and "macro-economically" desirable share of renewables and whether policy decisions are capable of reliably determining what this might be. However, since policy-based goals for the share of renewables already exist, at both EU and national level, one must at least make sure that these are achieved at the lowest possible cost to citizens and companies.

The Commission's recommendation, that support for existing installations should not be changed retrospectively, is appropriate in principle, irrespective of how one views existing renewables support, because retrospective changes to statutory regulations would increase investment insecurity far beyond the renewables sector and, in the long term, undermine the credibility of the state incentive system.

Impact on Efficiency and Individual Freedom of Choice

The proposed degressive elements of the support systems and the change from state-defined support levels, particularly state guaranteed feed-in tariffs, to more competition-based procedures, particularly to feed-in premiums and quota models determined by competitive tenders, limit overcompensation and mean that the cost reduction potential, realised on setting up renewable power plants, is passed on to the consumer.

Special, time-limited support for technologies that are still in the development stage may compensate for their temporary lack of competitiveness and, in the long term, result in greater technological competition. In practice, however, it is often not possible to determine whether technologies are actually still in the development phase so there is a danger that technologies will be sheltered for too long from competition and inefficiently deployed.

In principle, all power plant operators should compete on a level playing field. **Giving long-term preferential treatment to non-competitive small operators by way of guaranteed feed-in tariffs results in inefficiencies.**

The convergence of renewables support by the Member States and its integration into the internal market by a greater use of "cooperation mechanisms" can result in the support becoming more efficient. Renewables are then supported where they can be most cost-effectively produced rather than where the support levels are at their highest.

Impact on Growth and Employment

Renewables support which places more emphasis on market-based instruments reduces the energy costs for companies and thus increases growth and employment.

Impact on Europe as a Business Location

As a result of European coordination of renewables support, competition in the internal market **will be strengthened**, not only among the power plant operators but also **between locations and technologies**. This will limit energy costs for companies which has a positive impact on Europe as a business location.

Legal Assessment

Legislative competence

The EU can implement measures to support renewable energy sources (Art. 194 (1) (c) TFEU). In particular, it can publish non-binding renewables guidelines in the form of "best practice" recommendations.

Subsidiarity

Unproblematic.

Compatibility with EU law in other respects

The ban on retrospective changes to existing renewables support, called for the Commission, **accords with the ban on retrospective legislation** applicable under the principle of the Rule of Law (Art. 2 TEU; ECJ Case 98/78 – Racke).

Impact on German law

As renewables guidelines are non-binding, they have no direct effect on the German Renewable Energy Act (EEG). However, they do set out fundamental principles for the drafting of national rules on renewables support which will also be relevant for their - binding - assessment under state aid regulations.

The EEG, as amended (2012), is just at the beginning of the changeover, recommended by the Commission, to support instruments with "more market exposure" and a competition-based support level. Operators of renewable power plants can choose whether to let the network operators buy renewable electricity for a fixed feed-in payment (§ 8 EEG) or to market it directly (§§ 33 et seq. EEG), in which case they receive an additional "market premium" from the network operator (§ 33 g et seq. EEG). The main support instruments of the EEG are fixed, technology-specific feed-in tariffs (§§ 16 et seq. and §§ 23 et seq. EEG) that are paid over a fixed period of 20 years (§ 21 EEG). By contrast, the renewables guidelines recommend an EU-wide standard support period of 10 to 15 years or support limited to a specific number of full load hours. As the level of the feed-in tariff specified under the EEG distinguishes between different technologies, there is currently no real competition between technologies. The aim of achieving a broad technology-mix takes precedence over finding the most cost-effective renewables support. This is also accepted by the renewables guidelines. The use, recommended by the Commission, of "automatic degressive elements" when setting the support levels, is already enshrined in the EEG in the form of degression rates (§ 20 EEG). In addition, under the EEG, there is an automatic adjustment of support for solar energy as soon as statutory development goals are reached ("flexible ceiling", §§ 20a and 20b EEG). The EEG - with the exception of wind energy - is drafted to be neutral as regards location and thus largely corresponds to the renewables guidelines. However, only renewable power plants operated in Germany are supported (§ 2 No. 1 EEG) which contradicts the Commission's recommendation that payments should also go to renewably sourced electricity produced in other Member States.

Conclusion

The recommendation that the support for existing installations will not be changed retrospectively is consistent with the ban on retrospective legislation applicable under the Rule of Law and prevents the credibility of the state incentive system from being undermined. The degressive elements of the support systems and the change from state guaranteed feed-in tariffs to feed-in premiums and quota models determined by competitive tenders, mean that overcompensation to plants is limited. Giving long-term preferential treatment to non-competitive small operators by way of guaranteed feed-in tariffs results in inefficiencies. As a result of European coordination of renewables support, competition will be strengthened between locations and technologies.