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## Investments in renewable energy under the State Aid Guidelines on environmental protection

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## Abstract

*This article describes the methodology and treatment of investments in renewable energy under the State Aid Guidelines on environmental protection. The Guidelines are currently under an on-going review and a revised version is scheduled for 2014. The current "extra cost" method, which serves to identify eligible costs to which aid can be granted, has remained the same for more than a decade. However, it fails to address the main objective of protecting the environment and leads to arbitrary results. It is put forward that an alternative method, the Net Present Value calculation, is better suited to identify the eligible costs in order to ensure that the aid is calculated on the basis of the specific project and is linked to environmental protection objectives.*

*Cet article décrit la méthodologie et le traitement des investissements dans les énergies renouvelables dans le cadre des lignes directrices relatives aux aides d'État pour la protection de l'environnement. Les lignes directrices sont en cours d'examen et une version révisée est prévue pour 2014. La méthode actuelle des «coûts supplémentaires», qui sert à déterminer les coûts admissibles pour lesquels une aide peut être accordée, est restée la même depuis plus d'une décennie.*

*Cependant, elle ne parvient pas à répondre à l'objectif principal de protection de l'environnement et conduit à des résultats arbitraires. Il est mis en avant qu'une méthode alternative, le calcul la Valeur Actuelle Nette, est mieux adaptée pour identifier les coûts admissibles afin de s'assurer que l'aide est calculée sur la base du projet spécifique et est liée à des objectifs de protection de l'environnement.*

\* The views and opinions expressed in this article are those of the author and do not necessarily reflect the official policy or position of the European Commission or the EFTA Surveillance Authority.

# Investments in renewable energy under the State Aid Guidelines on environmental protection

## I. Introduction

1. The State Aid Guidelines on environmental protection (the "EAG") are currently subject to a review by the European Commission and are due to be adopted in a new form by 31 December 2014.<sup>1</sup> The review has opened the floor to taking a critical look at the current rules with a view to bringing them up to speed with market developments, EU political strategies and secondary legislation.

2. The EAG concern two key areas

→ aid for investments in (and the operation of) renewable energy projects; and

→ aid in the form of energy tax derogations.

3. State aid in the form of tax derogations is typically introduced to ensure that national energy intensive industry is not too heavily taxed and remains competitive internationally. While this type of aid is important downstream (for the customers of power producers), the methodology and objective of the aid are different to those relating to aid for investment in renewables. This article focuses only on aid for investments in (and the operation of) renewable energy sources.

4. The principles governing the grant of aid for investments in renewables under the EAG have remained largely the same for more than a decade. As will be shown below, they fail to address the main objective of protecting the environment. This objective, combined with the political objective of increasing investments in renewable energy and energy efficiency technologies, require a fundamental revision of the EAG. A new approach should be introduced as regards the grant of aid, which encourages constructive and intelligent investments in renewable energy and energy efficiency. It should also be commercially oriented and easy to apply in practice.

## II. Aid for renewable energy production: An EU objective

5. The Commission has recognised that investments in renewable energy serve an EU target.<sup>2</sup> Under the 2007 Action Plan for Energy Efficiency, the European Council made a commitment that by 2020 the EU should achieve: (i) a 20% reduction in greenhouse gas emissions compared to 1990; (ii) savings of 20% of the EU's energy consumption compared to projections for 2020; and (iii) 20% of

1 See Commission Consultation Paper, Environmental and Energy Aid Guidelines 2014-2020, of 11 March 2013, available at [http://ec.europa.eu/competition/state\\_aid/legislation/environmental\\_aid\\_issues\\_paper\\_en.pdf](http://ec.europa.eu/competition/state_aid/legislation/environmental_aid_issues_paper_en.pdf).

2 See Commission Communication, Renewable Energy: a major player in the European energy market, of 6 June 2012 (COM (2012) 271 final). See also, speech by G. Oettinger (Commissioner for Energy) of 20 September 2012, Challenges for the European Energy Policy.

overall EU energy consumption from renewable energies.<sup>3</sup> Known as the “20-20-20” targets, these have been confirmed in the Commission’s Energy Roadmap 2050<sup>4</sup> and in a recent Green Paper launching a public consultation on a future 2030 framework for climate and energy policies (the “Consultation Paper”).<sup>5</sup> The Green Paper explicitly refers to the role of investments, stating that early agreement on a 2030 framework is important because “*long investment cycles mean that infrastructure funded in the near term will still be in place in 2030 and beyond and investors therefore need certainty and reduced regulatory risk*”.

6. However, renewable energy plants remain costly to build and operate compared to conventional energy plants. This is largely because the additional costs of producing green energy cannot be recuperated through the income generated from sales. The sales price of electricity remains the same irrespective of whether it is “green” or “grey” electricity and prices cannot therefore be adjusted upwards to cover the higher costs.<sup>6</sup>

7. While in 2010 Europe was on track in terms of reaching the 2020 target for renewable energies to represent 20% of the EU’s energy consumption,<sup>7</sup> the continued financial crisis has rendered the fulfilment of this target much less certain. Although in 2010 the renewables share was in the range of 12.7%, the Commission has recognised that new measures will be needed in order for most Member States to achieve the 2020 target.<sup>8</sup> It is therefore necessary to give further impetus to encouraging increased investment in renewable energy production. As has previously been recognized, state aid can be an effective tool in achieving this objective of common interest (*i.e.* protection of the environment). Indeed, the justification for granting state aid to renewable energy projects is that a higher level of environmental protection can be achieved than without state aid (through an increase in renewable energy production). It is therefore essential that the framework for granting aid is designed in such a manner as to make it possible to achieve such an objective.

## 1. Eligible projects: General considerations

8. The reason for the grant of state aid is to encourage investments in renewable energy projects which are not sufficiently profitable in order to motivate investors to

3 The “20-20-20” targets were set out in a Commission Communication of 19 October 2006 entitled Action Plan for Energy Efficiency: Realising the Potential, which was endorsed by the European Council (in March 2007) and by the European Parliament (in its resolution of 31 January 2008).

4 COM(2011) 885 final, 15 December 2011.

5 COM(2013) 169 final 27 March 2013 (the public consultation lasts until 2 July 2013).

6 Electricity is bought and sold on energy wholesale markets either through exchanges, traders or brokers, or directly from electricity suppliers (on the basis of bilateral agreements) without any distinction being made between grey and green electricity, either in terms of price or upon delivery of the electricity.

7 Speech by C. Hedegaard (Commissioner for Climate Action) of 1 March 2012, What can we do to meet the 2020 targets. See also Commission Communication of 31 January 2011, Renewable Energy: Progressing towards the 2020 target, COM(2011) 31 final.

8 See Consultation Paper, COM(2013) 169 final, 27 March 2013.

undertake them without additional state funding.<sup>9</sup> Certain types of renewable energy production projects are, however, profitable in their own right and should therefore not receive state support. Lack of profitability is therefore an important means of distinguishing between projects which should be eligible for state aid and those which should not. In this regard, points 27-28 of the EAG provide that aid should only be granted where it changes the behaviour of the undertaking (“*incentive effect*” and “*necessity of the aid*”).<sup>10</sup> In other words, the aid should trigger the investment. Thus, for example, where projects have begun prior to the grant of aid (and the behaviour has therefore not changed with the aid) this is typically because the project was (or expected to be) profitable.<sup>11</sup>

9. State aid may be granted separately for both investments and for operating costs. In the latter case, any investment aid received must be deducted, meaning that the overall maximum aid is fixed by the upper limit for granting operating aid.

10. Essentially, projects eligible for investment aid are selected under the EAG by reference to a “*counterfactual analysis*”,<sup>12</sup> which forms part of the “*extra costs method*”. Although this is in fact simply a basis for determining eligible investment costs, that is, the amount of costs in respect of which state aid may be granted, it has in practice had the effect of serving as an overall selection method for eligible projects. As will be argued below, the extra costs method is outdated and leads to arbitrary results which are not linked to the protection of the environment. The method is based on a hypothesis, thus providing no basis for *ex post* control. In addition, it does not include a filter for selecting the most efficient projects. Finally, it may be questioned whether the method actually ensures that aid is only granted where it triggers investment.

11. Before explaining how the rules can be changed, it is useful first to review in more detail the principles on the grant of state aid for renewable energy projects in the current EAG and how they have been implemented in practice. Section 3.1.6 of the current EAG provides that projects for the production of renewable energy may receive: (i) investment aid; and (ii) operating aid.<sup>13</sup>

## 2. Investment aid: Extra costs method

12. In order to identify the costs in respect of which aid may be granted (the “*eligible costs*”), the EAG provide that the “*extra costs*” method should be applied.<sup>14</sup> Eligible costs must be distinguished from the “*aid intensity*”: once the eligible

9 The EAG recognise this as the reason for granting aid to investments in renewable projects (point 48 of the EAG).

10 Points 27-28 and 142-146 of the EAG.

11 Point 28 of the EAG suggests that there are cases where unprofitable investment projects will go ahead without aid due to their intrinsic benefits (which cover benefits other than just profits, such as green image). However, this is very vague, there are no examples and it appears not to have been reflected elsewhere in the EAG.

12 Point 28 of the EAG.

13 Investment aid may also be granted on the basis of Article 25 of the General Block Exemption Regulation (No 800/2008, OJ L 214, 9 August 2008).

14 Points 105-106 of the EAG, which refer to points 81-83.

costs have been determined, the maximum amount of aid which may be granted under the EAG is expressed as a percentage of the total eligible investment costs, that is, the aid intensity.

**13.** The extra costs method is based on the notion that aid must be limited to the environmental benefit: the eligible costs are limited to the extra costs required to build a renewable energy plant as compared to a conventional plant. Under this method, eligible investment costs are calculated by reference to the difference between:

→ the investment costs of a conventional energy plant (the “reference investment”) with similar capacity to the actual project; and

→ the investment costs of the actual renewable energy plant.

**14.** Investment costs are calculated net of extra operating benefits (such as fuel savings) and operating costs (such as increased maintenance costs) for the first five years of the lifetime of the project.<sup>15</sup>

## 2.1. Requirement of a reference investment or a counterfactual

**15.** On the basis of the rules in the EAG, the Commission has, at times, insisted on a “reference investment”, while at other times it has been content with a “credible counterfactual”.<sup>16</sup>

**16.** Where a credible “reference investment” is required, it must represent a “real” alternative, proof of which must be provided through internal documents or board meetings.<sup>17</sup>

**17.** A number of consequences flow from this:

→ the eligible costs will always be reduced by the costs of the reference investment and therefore will always be less than 100% of the actual investment costs; and

→ to be eligible, an investor must first have had a “polluting” investment project in mind. Therefore, “pure green” investors who from the outset wish to invest in renewable energy projects are essentially excluded.

**18.** Where a credible counterfactual is required, there is no need for a reference investment; it must simply be shown that it is credible that the contemplated investment would not take place at all without state aid.<sup>18</sup>

<sup>15</sup> Point 106 of the EAG. Eligible costs must be distinguished from the “aid intensity”. Once the eligible costs have been determined the maximum amount of aid which may be granted under the EAG is expressed as a percentage of the total eligible investment costs, that is, the aid intensity.

<sup>16</sup> Point 81(b) of the EAG.

<sup>17</sup> See, for example, Commission decision N 295/2008 – *Austria*, 24 March 2010. See also N 451/2009 – *Germany*, 14 April 2009.

<sup>18</sup> See, for example, Commission decisions N 234/2008 – *Sweden*, 5 November 2008, and C35/2003 – *Italy*, 16 March 2005.

**19.** The consequences that flow from this are also twofold:

→ up to 100% of the actual investment costs qualify as eligible costs; and

→ the scope of eligible investors is wide (*i.e.* it includes any investor who wishes to invest in renewable energy sources).

## 2.2. Shortcomings of the extra costs method

**20.** The extra costs method has given rise to a number of problems, set out in the following.

### 2.2.1. Determination of eligible costs is arbitrary

**21.** By determining eligible costs on the basis of a reference investment, the amount of eligible costs becomes arbitrary because the type and cost of reference projects vary greatly. For example, in one case the eligible costs were calculated at between 7 and 8% of the actual investment costs,<sup>19</sup> while in another case they were calculated at approximately 58% of the actual investment costs.<sup>20</sup> On the other hand, in cases where no reference investment is required, the eligible costs have been up to 100% of the actual investment costs.<sup>21</sup> There is no consistency between cases in which eligible costs represent a larger or smaller part of the actual investment costs.

**22.** The extra costs method is therefore a calculation method which bears no real relation to the actual costs of the project in question. It is the result of a calculation which involves a hypothetical which is never realised. As a result, it cannot function as a trigger for the actual investment or be linked to the environmental benefit.

### 2.2.2. Determination of eligible investors is arbitrary

**23.** Where a reference project is required, only “black” investors (who can prove that they initially wished to invest in conventional energy) are eligible, thus limiting the scope of eligible investors.

### 2.2.3. The use of the extra costs method is not practical

**24.** Investors must prepare additional calculations in order to determine the scope of eligible costs. It is not possible to use existing and readily available calculations based on commercial considerations and the profitability of the project.

### 2.2.4. No *ex post* control

**25.** Under the extra costs method, the determination of eligible costs based on a reference investment is ultimately a result of comparing a hypothetical project with the actual project. Since the hypothetical project by definition is not carried out, the calculation of eligible costs based on such a project cannot serve as a basis for *ex post* control (or monitoring) of whether the aid granted was necessary or linked to the environmental benefit.

<sup>19</sup> Commission decision N 295/2008 – *Austria*, 24 March 2010.

<sup>20</sup> 39 % after deduction of operating costs and benefits: Commission decision N 364/09 – *Valle d’Aosta*, 10 November 2009.

<sup>21</sup> Such as in case N 66/2009 – *Sweden*, 19 May 2009.

### 2.2.5. Operating aid disguised as investment aid

26. The extra cost method is coupled with a requirement that the eligible investment costs be adjusted to account for any extra operating benefits (which must be deducted from the eligible costs) and any extra operating costs (which may be added to the eligible costs). This method has in certain cases resulted in the grant of operating aid disguised as investment aid. This is best explained via an example. If the eligible investment costs are 100 and the extra operating benefits are 50, the eligible investment costs are reduced from 100 to 50. However, if the extra operating costs are higher than the operating benefits, say 75, the eligible investment costs are only reduced from 100 to 75, and in essence, therefore, some extra operating costs are included as eligible investment costs.<sup>22</sup> In allowing this in its decision-making practice, the Commission has granted operating aid disguised as investment aid.<sup>23</sup>

## 3. Operating aid: Sets maximum amount of overall aid

27. The EAG provide that operating aid may be granted to compensate for the difference between:

→ the operating costs of producing renewable energy; and

→ the operating income based on market prices.<sup>24</sup>

28. The aid may be granted for the lifetime of the renewable production plant (*i.e.* in general, about 20 years).

29. This basically means that investors may receive compensation for the difference between the lower market price for green electricity and the higher cost of producing green energy – for a period of 20 years.

30. Any investment aid received must be deducted from operating aid. This means that the maximum overall aid which may be granted under the EAG is fixed in the rules on operating aid.

### 3.1. Shortcomings

#### 3.1.1. Inconsistency between eligibility for investment aid and operating aid

31. In order to be eligible for operating aid, no counterfactual analysis is required. In other words, there is no need to prove that the investor originally wished to invest in “polluting” energy. This means that projects may be eligible for operating aid without necessarily being eligible for investment aid. In addition, it is easier to satisfy the conditions for eligibility for operating aid than those for investment aid. This is inconsistent and has an obvious result: instead of grating

<sup>22</sup> See Commission decision N 266/03 – *Nederland*, 23 July 2003.

<sup>23</sup> This problem does not occur under Article 25 of the General Block Exemption since it is based on a simplified “extra cost” method whereby the eligible investment costs are determined without adjustment for extra operating benefits and costs.

<sup>24</sup> Point 109 of the EAG.

investment aid, Member States grant operating aid. Indeed, many Member States have introduced schemes to grant operating aid.

## III. An alternative: A net present value calculation

32. In the following paragraphs, an alternative way to determine eligible costs is proposed. The proposed method is based on granting both investment aid and operating aid and was first proposed by Norway in the course of several state aid investigations, such as the *Norway (Mehuken II wind park)* case.<sup>25</sup> It determines eligible costs on the basis of the actual project and therefore eliminates any arbitrariness. It ensures that aid is limited to the amount necessary for the project to go ahead – in other words, the amount of aid granted is that which will trigger the renewable energy project; thus, the proposed method links the aid granted to the environmental benefit of the project. The method is coupled with a filter which ensures that only the most efficient energy projects are eligible for support. It also allows for *ex post* control.

### 1. Net present value calculation

33. Although the extra costs method only concerns investment aid, a proposal to change the rules is best explained in the light of the fact that the EAG allow for the grant of both investment aid and operating aid for the same renewable power plant.<sup>26</sup>

34. The proposal is to base the grant of state aid for renewable investment projects on a net present value (“NPV”) calculation, together with a public tender.

35. An NPV calculation essentially defines the value of the investment and is best explained by means of a simple example. Imagine a scenario where the investment costs for the construction of a renewable energy plant are EUR 500.000. The plant will have operating income of EUR 1 million and operating costs of EUR 500.000 over its lifetime of 20 years. The difference between operating income and operating costs over 20 years – in this case EUR 500.000 (income of EUR 1 million less costs of EUR 500.000) – in other words, the net income, discounted to present values, must be capable of covering the initial investment costs (EUR 500.000). In this example, the NPV is zero, that is, the project breaks even, which means that the costs of the investment have been recovered through the income.<sup>27</sup> However, if the NPV is less than zero, the net income generated is too little to cover the

<sup>25</sup> See EFTA Surveillance Authority decision no 125/06/COL of 3 May 2006. The latest Energy Fund Scheme decision is decision no 248/11/COL, OJ C 314, 27 October 2011 p. 4, as amended by decision no 299/11/COL, OJ C 10, 12 January 2012, p. 4. See also EFTA Surveillance Authority decisions 491/10/COL – *Norway (Lista wind park)*; 491/10/COL – *Norway (Ytre Vikna wind park)*; 489/10/COL – *Norway (Nygardsfjellet wind park)*; 488/10/COL – *Norway (Jaren wind park)*; 487/10/COL – *Norway (Mehuken II wind park)* all of 15 December 2010, and Eidsiva: <http://www.eftasurv.int/media/decisions/518-12-COL.pdf>.

<sup>26</sup> Points 105 and 109 of the EAG.

<sup>27</sup> This is the case in the example since the net income of EUR 500.000 covers the original investment costs of EUR 500.000.

investment costs and the project is not profitable. To finance this gap, the proposal is to grant state aid, in other words, where the NPV of a project is less than zero, it will be eligible for state aid. The amount of aid will be the amount necessary to bring the NPV to zero. This proposal is broken into three parts, as follows.

## 1.1. Part I: The proposal is to grant aid where the NPV is less than zero. The amount of aid will be the amount necessary to bring the NPV to zero

### 1.1.1. General advantages

36. An NPV which reaches zero is, for a rational investor, the trigger point for when a project can be realized. No rational investor will launch a project with a negative NPV because the original investment costs will not be recuperated. The NPV method thereby ensures that only unprofitable projects are eligible for state aid. At the same time, by granting aid to cover the gap, the aid will serve as a trigger for the particular investment to go ahead. In this way, the amount of aid is limited to the minimum necessary in order for the project to go ahead. The aid is therefore also linked to the environmental benefit.

### 1.1.2. Practical and commercially oriented approach

37. Many investors prepare an NPV calculation to determine the profitability of an investment project. An NPV calculation is therefore a readily available commercial calculation which most investors understand and have already carried out.

### 1.1.3. Determination of costs is based on the actual project, allowing for *ex post* control

38. In contrast to the extra costs method, the determination of the amount of the aid is linked to the actual project – as opposed to being the result of a comparison with a hypothetical project which will never take place. This allows for *ex post* control of whether the amount of aid granted was too much or insufficient.

### 1.1.4. All investors are eligible

39. In addition, all investors are eligible irrespective of whether or not they would have invested in green energy to begin with.

## 1.2. Part II: The operator needs to have a reasonable rate of return

40. The fact that the amount of aid granted will only be such as to ensure that the NPV reaches zero and that the exact amount of the investment costs are recovered means that there will be no return on investing in a project. No rational investor will undertake a project if it can only recover its original investment costs; there must also be a return. In order to resolve this issue, the aid amount can be increased to ensure a reasonable rate of return by adjusting

the discount rate in the NPV calculation. The level of the reasonable rate of return should be based on the average returns in the sector, *i.e.* a benchmark return.

41. Since the NPV calculation will generally cover a period of approximately 20 years, a benchmark will arguably be either too high (if electricity prices later decrease) or too low (if electricity prices increase). While a claw-back mechanism triggered by a benchmark which is higher than the electricity price could be introduced, this should be balanced with the consideration that the motivation to invest lies also in the (unknown) potential to realise an unexpected profit. Thus, a claw-back mechanism should apply only above a certain threshold. In other words, the gap between actual prices and the benchmark price forming the basis for granting the aid must exceed a minimum threshold before triggering the claw-back mechanism.

## 1.3. Part III: An efficient green project – public tender

42. Due to the fact that the amount of aid granted is determined on the basis of whether the overall costs exceed the income, there is an inherent risk that potential aid beneficiaries can artificially raise their costs. Essentially, the less efficient a producer is, the more aid the producer may receive on the basis of an NPV calculation. This problem can be resolved by requiring that the use of an NPV calculation be coupled with a public tender. The project with the best NPV, that is, the NPV which is the least negative, would win the tender. If the market price of electricity is fixed at the same level for all bidders, bidders are forced to compete on costs.<sup>28</sup> This means that the most efficient bidder would win the tender.

43. The use of the NPV method for the purposes of determining the amount of aid has been accepted in a decision by the EFTA Surveillance Authority to allow the grant of aid under a scheme based on the Norwegian Energy Fund (ENOVA), and in several decisions approving individual aid allocations under that scheme.<sup>29</sup>

## IV. Conclusion

44. As set out above, the proposal to determine eligible costs based on an NPV calculation is conducive to encouraging investments in renewable energy. The approach can be further refined and nuanced to take account of commercial considerations and experience. This article aims at establishing a platform for such further refinement of the NPV approach, with the ultimate objective of identifying an alternative method for the granting of state aid for renewable energy projects under the EU state aid rules. ■

<sup>28</sup> The complexities involved in determining the electricity price under the proposed method are not addressed in this article.

<sup>29</sup> EFTA Surveillance Authority, decision no 125/06/COL of 3 May 2006. The latest Energy Fund Scheme decision is decision no 248/11/COL, OJ C 314, 27 October 2011 p. 4, as amended by decision no 299/11/COL, OJ C 10 12 January 2012, p. 4. See also the cases referred to in note 25.

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