

State Aid: The concept and possible implications for EMR

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ELEMENTS OF FUTURE CLEAN ENERGY POLICY

Energy
efficiency

Low-carbon
technologies

Resource
adequacy

Infrastructure

Demand
response

SOME OF THE MEANS TO GET THERE ...

- **Low carbon technologies**: support for renewables (feed-in tariffs, contracts for difference, renewables obligation schemes, investment in wind power development projects, green certificates , electricity tax exemption for biofuels), investment in CCS, ...
- **Supporting energy efficiency**: Investment aid for modernisation of district heating network, energy saving allowance for landlords, Green Investment Bank, white certificates, ...
- **Infrastructure**: Construction of an electricity cable, funding of construction of waste-fuelled power station, construction and modernisation of electricity connection networks for renewable energies, construction of interconnection and cross-border power line, ...
- **Resource adequacy**: capacity/capability payments, ...
- **Demand Response**: Compensation for instant interruptibility services, ...

... (MIGHT) DISTORT COMPETITION

- Free competition is one of the pillars of a good functioning internal market

- Competition might be distorted through:

Dumping, abuse of dominant position, merger, ... **state aid**

- Anti-competitive behavior is, in principle, prohibited

EU STATE AID REGIME: WHEN DOES IT APPLY AND WHAT ARE THE CONSEQUENCES?

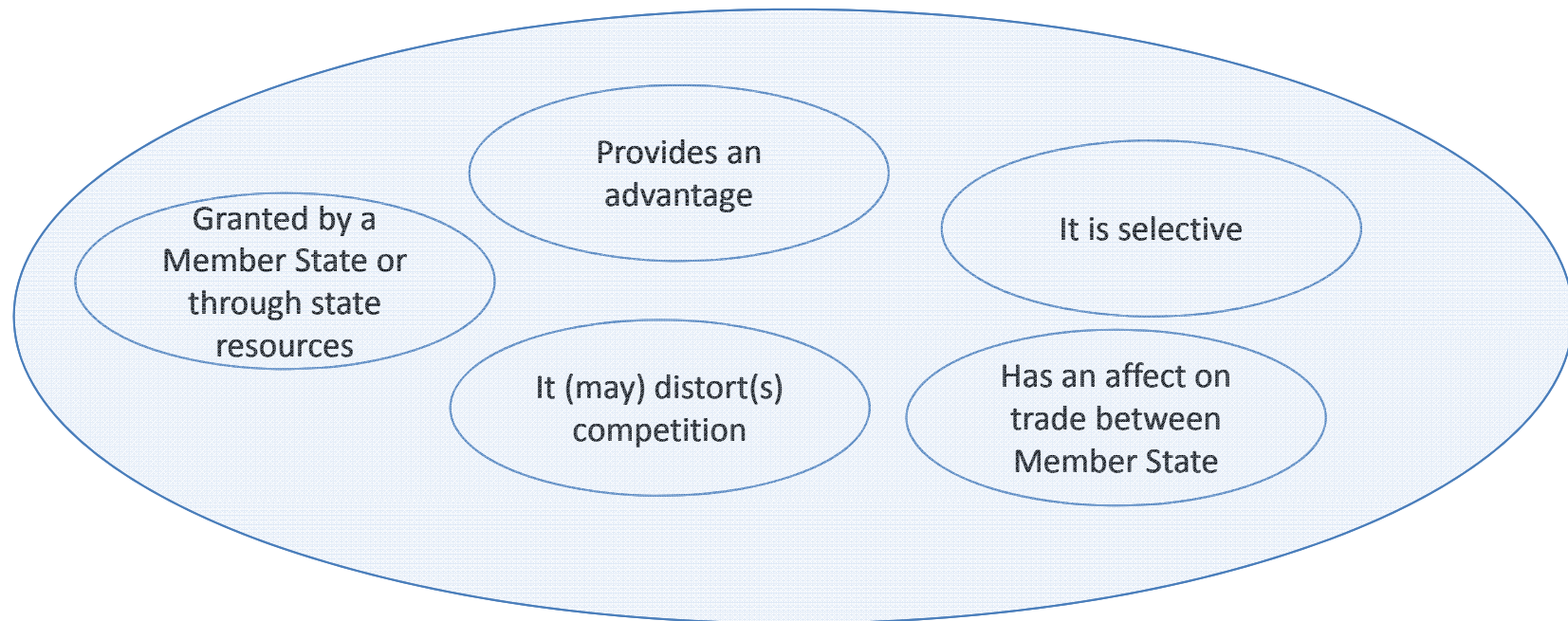
THE IMPORTANCE OF BEING AN UNDERTAKING

“(...) the concept of an undertaking encompasses every entity engaged in an economic activity, regardless of the legal status of the entity and the way in which it is financed (...)” (Höffner/Elsner, ECJ, C-41/90, para. 21)

- Only undertakings can receive state aid.
- They can receive it directly or indirectly

STATE AID CRITERIA

Article 107 (1) TFEU



State aid only if ALL criteria are fulfilled

NOT CLASSIFIED AS STATE AID IF:

- Not all criteria fulfilled
- De minimis aid
 - General: EURO 200.000 per undertaking over three fiscal years
 - SGEI: EURO 500.000 per undertaking over three fiscal years

STATE AID

- Notification requirement
 - Implementation of aid before notification: aid = unlawful
- No implementation before COM Decision
 - Depending on complexity, decision between 2 – 20 months
 - European Commission will assess:
 - Whether the measure constitutes state aid.
 - If it does constitute state aid, whether it can be exempted
 - **Only the European Commission can grant an exemption.** No exemption => the measure cannot be implemented!
- Unlawful non-exemptable aid
 - Has to be recovered (+ interest)

ASSESSMENT: TWO QUESTIONS

1. Is there state aid?
2. If yes, can it be exempted?

Important: Question 1 is objective, question 2 is subjective!

CAN IT BE EXEMPTED?

Article 107 (3) TFEU

Further specified in:

- General Block Exemption Regulation (GBER)
- Guidelines
- Communications

Article 106 (2) TFEU (Service of General Economic Interest)

RELEVANT EXEMPTIONS FOR ENERGY

- Guidelines for state aid for environmental protection (EAG), and Draft Guidelines for energy and environmental state aid measures (EEAG)
- General Block Exemption Regulation (also under revision)
- Article 107 (3)(c) TFEU
- Article 107 (3)(b) TFEU
- Communication on compensation granted for Services of General Economic Interest (SGEI)
- Guidelines on State aid measures in the context of the EU ETS post 2012
- Guidelines on State aid for Research, Development and Innovation (R&D&I)

CONTENT OF DRAFT STATE AID GUIDELINES

- Contain criteria for exemption of certain state aid measures
- Definition of measures falling within the scope of the Guidelines
- Definition of eligible costs
- Aid intensity
- Description of common assessment principles

DRAFT EEAG: CRITICAL ISSUES

OBJECTIVES AND SCOPE OF EEAG

Main objectives:

- Environmental protection and energy objectives
- Balancing achievement of these objectives against competition

Scope:

- Energy aid measures aiming at environmental protection (including CCS)
- Energy infrastructure aid measures
- Capacity mechanisms

COMMON ASSESSMENT PRINCIPLES: LET'S BALANCE

Addressing
market failure

Distortion of
competition

Incentive effect

Necessary

Appropriate

Proportional

No undue distortion of competition

Transparency

OPERATING AID FOR RENEWABLES (1)

Feed-in-premium or feed-in tariff

Deployed technologies

- Bidding process
- Open to all generators (some limitations possible)
- Feed-in premium or equivalent measure involving direct marketing
- If existence of competitive intra-day balancing markets: standard balancing responsibilities apply
- Only till full depreciation of plant
- Deduction of investment aid previously received

Less-deployed technologies

- It meets all conditions for deployed technologies; **OR**
- Aid per unit of energy \neq total levelized costs of producing energy from technology in question – market price of the form of energy concerned, **AND**
- All other conditions for deployed technologies except bidding process and access to all generators

Project of first commercial scale and small installations

- Small installations with an electricity capacity less than [1] MW (wind energy [5 MW or 3 generation units])
- Feed-in-tariff
- ...

Operating aid schemes should in principle be open to other EEA countries and Contracting

OPERATING AID FOR RENEWABLES (2)

Certificates

General rules: (i) essential to ensure the viability of the renewable energy source, (ii) no overcompensation, (iii) does not dissuade res producers from becoming more competitive

Deployed technologies

- Non-discrimination between all renewables generators
- Possibility to exclude energy production from biomass
- If existence of competitive intra-day balancing markets: standard balancing responsibilities apply
- Deduction of investment aid previously received

Less-deployed technologies

- Different levels of support may apply
- No overcompensation
- If existence of competitive intra-day balancing markets: standard balancing responsibilities apply
- Deduction of investment aid previously received

Project of first commercial scale and small installations

- Small installations with an electricity capacity less than [1] MW (wind energy [5 MW or 3 generation units])
- Aid does not exceed the difference between the cost of producing energy from renewable sources and the market price of the form of energy concerned.

Operating aid schemes should in principle be open to other EEA countries and Contracting Parties of the Energy Community

ENERGY EFFICIENCY: AID INTENSITIES

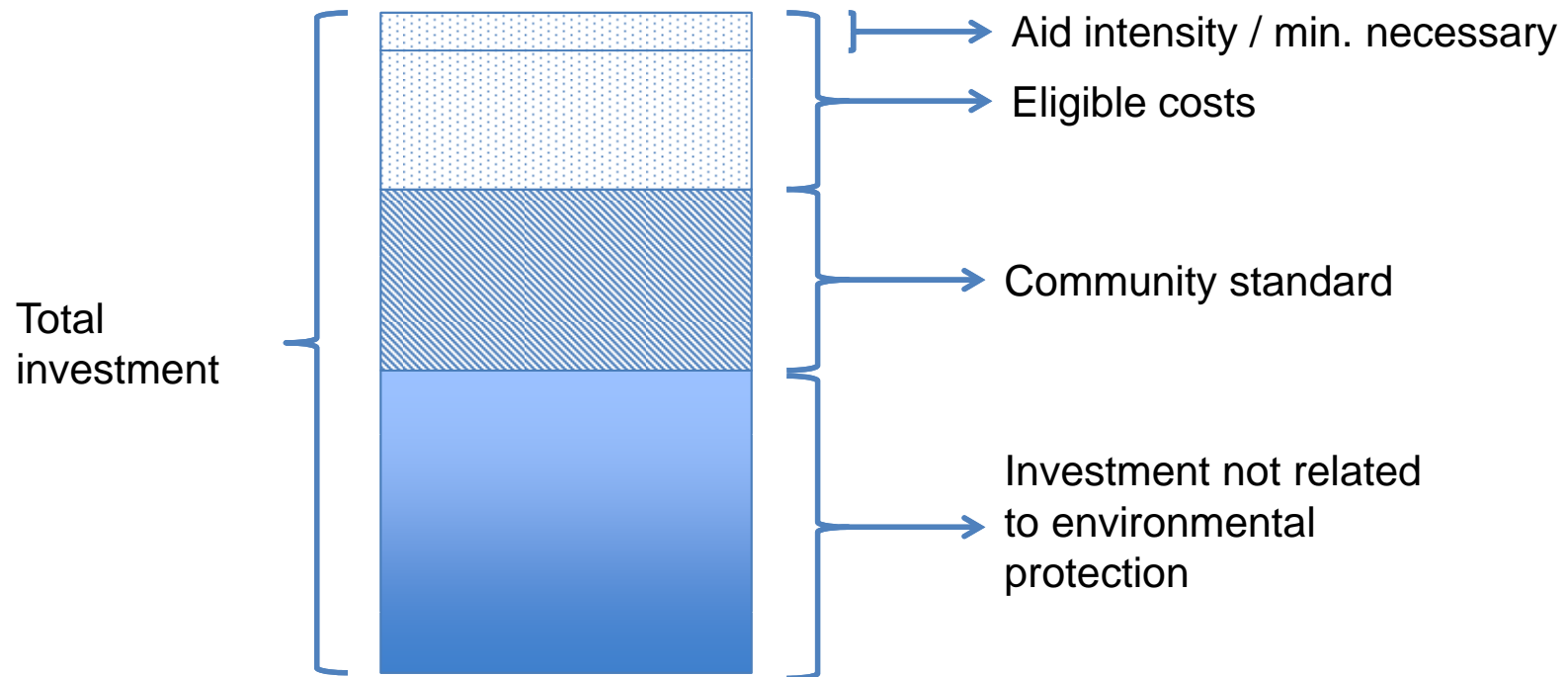
Defined as: „an amount of saved energy determined by measuring and/or estimating consumption before and after implementation of an energy efficiency improvement measure, whilst ensuring normalisation for external conditions that affect energy consumption“

Aid measures fall within the scope of EEAG

But, lower aid intensities for investment aid compared to current EAG:

EAG			EEAG		
Small Enterprise	Medium Enterprise	Large Enterprise	Small Enterprise	Medium Enterprise	Large Enterprise
80%	70%	60%	40%	30%	20%
Competitive bidding procedure: 100%					

ELIGIBLE COSTS AND AID INTENSITIES: INDIVIDUAL AID



AID FOR GENERATION ADEQUACY: SUPPLY V. DEMAND?

- In principle, inclusion of capacity mechanisms in EEAG = positive

But:

- Demand side management as an alternative measure?
- Demand side management as part of the measure?

EMR AND STATE AID: CFD AND CAPACITY MECHANISMS

CONTRACT FOR DIFFERENCE AND DRAFT EEAG

- Allocation method?
- Strike price?
 - Deployed / non-deployed technologies
 - Proportionality
- Period of contract?

CAPACITY MECHANISM

- Is it state aid?
 - Transfer of state resources?
 - Capacity mechanisms as public service obligations: Possible applicability of Altmark?
- Article 107 (2) TFEU exemption?
- Capacity mechanisms and EEAG
 - Possible alternatives: demand-side management, interconnection, etc.
 - Integration of demand-side management in mechanism?

About RAP

The Regulatory Assistance Project (RAP) is a global, non-profit team of experts that focuses on the long-term economic and environmental sustainability of the power and natural gas sectors. RAP has deep expertise in regulatory and market policies that:

- Promote economic efficiency
- Protect the environment
- Ensure system reliability
- Allocate system benefits fairly among all consumers

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