

The 7th Vienna Forum on European Energy Law

Session I: Beyond the point of no return:
Legal aspects of renewable energy

Supporting renewables through auctions

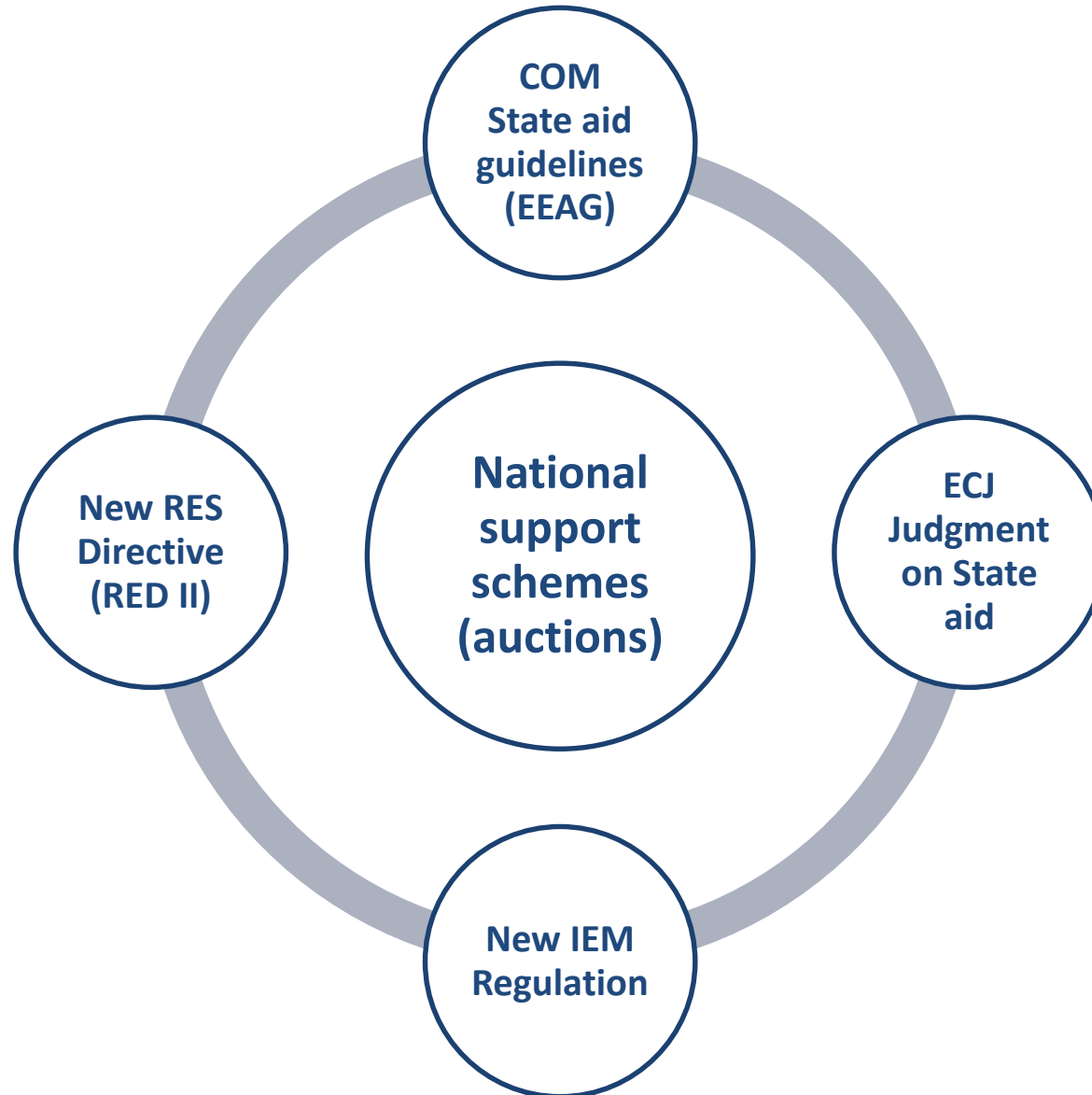
Fabian Pause

Vienna, 20 September 2019



CONTENT

Content





EU COMMISSION'S STATE AID GUIDELINES (EEAG 2014-2020) AS STARTING POINT

EEAG: Transforming national RES support schemes

- **Background**

- Since 2014, the EU Commission's Guidelines on State aid for environmental protection and energy 2014–2020 (EEAG) have become the **main driver for the progressing convergence and transformation of support schemes** for electricity RES in more than 20 EU Member States.
- Certain **assumption** that, in general, national RES support schemes constitute State aid.
- Key requirements for design of RES electricity support schemes are, inter alia, the **introduction of auctions** to determine the amount of aid and its payment in form of a **market premium**.

- **Mandatory implementation of a Market Premium (EEAG)**

- Aid must be granted as **market premium** in addition to market price received on market; premium may be **flexible** or **fixed** (para. 124 lit. (a));
- **Derogations:** installations < 500 kW (Wind energy: 3 MW or 3 generation units) and demonstration projects; **feed-in tariff** still possible (para. 125).

EEAG: Technology-neutral bidding processes (auctions)

- **Principle:** Market premium shall be determined and attributed following a **competitive bidding process, open to all RES generators on a non-discriminatory basis (para. 126).**

Derogations: No bidding process

Installations < 1 MW (Wind energy: 6 MW or 6 generation units) and demonstration projects (para. 127)

MS demonstrate that (1) only very limited number of projects are eligible, or (2) bidding process would lead to higher support levels or (3) low project realization rates (avoid underbidding).

- **Technology-specific bidding process:**
 - Process open to all generators would lead to a **suboptimal result** which cannot be addressed in the process design (para. 126 sentence 5).
 - **Potential reasons (non-exhaustive list):** (a) longer-term **potential** of a given new and innovative technology, (b) need to achieve **diversification**, (c) **network** constraints and **grid** stability, (d) system (integration) **costs**, or (e) possible **distortions** on the raw material markets (biomass).



NEW RENEWABLE ENERGY DIRECTIVE (EU) 2018/2001

Art. 4 RED II: “Common Rule Book” for support schemes

- **Principle 1** (direct price support schemes): support shall be granted in the form of a **market premium** (sliding or fixed);
Exemptions: Small-scale installations (in accordance with IEM-Regulation) and demonstration projects.
- **Principle 2:** MS shall ensure that support for RES electricity is granted in an **open, transparent, competitive, non-discriminatory and cost-effective** manner (but not necessarily by using auctions).
 - **Exemptions from tendering procedures:** Small-scale installations and demonstration projects, and/or establishing mechanisms to ensure regional diversification in RES deployment (cost-efficient system integration).
 - **Technology-specific tendering procedures:** Opening support schemes to all RES producers would lead to a **suboptimal** result, in view of:
 - (a) long-term **potential** of a particular technology; (b) the need to achieve **diversification**; (c) grid integration **costs**; (d) **network** constraints and **grid** stability; (e) possible **distortions** of raw materials markets (biomass).



INFLUENCE OF THE ECJ JURISDICTION AND MODERNIZATION OF STATE AID

State Aid: Character of support schemes and reform

- **ECJ judgment on German RES support scheme “EEG 2012”:**
 - ECJ: “EEG 2012” scheme **does not constitute** State aid.
 - Conclusion? Following scheme (EEG 2014) and current scheme (EEG 2017) were all subject to Commission’s State aid proceedings based on EEAG; now: **New flexibility for German legislator?**
- **State aid modernization process**
 - EEAG only relevant for RES support schemes constituting State aid, but **de facto standard** for all MS support schemes in the past.
 - **New RED II** copied key requirements for future support schemes from the EEAG 2014-2020 (Market premium and competitive bidding process to determine level of support; exemptions for smaller installations, derogations and technology-specific auctions in certain situations).
 - When Commission is now **reforming the EEAG** for the time after 2020/2022, it has to take into account the requirements of the new RED II and IEM regulation (**no structural changes possible**).

Stiftung

Umweltenergierecht

Stiftung Umweltenergierecht

Fabian Pause, LL.M. Eur.

Head of Department for European and International Environmental Energy Law and Comparative Law

Stiftung Umweltenergierecht - Foundation for Environmental Energy Law

Ludwigstraße 22

97070 Würzburg

Germany

Tel.: +49 9 31.79 40 77-18

Fax: +49 9 31.79 40 77-29

E-Mail: pause@stiftung-umweltenergierecht.de

Internet: www.stiftung-umweltenergierecht.de

www.stiftung-umweltenergierecht.de

Support our work!

Sparkasse Mainfranken Würzburg

Donations: IBAN DE16 7905 0000 0046 7431 83 / BIC BYLADEM1SWU