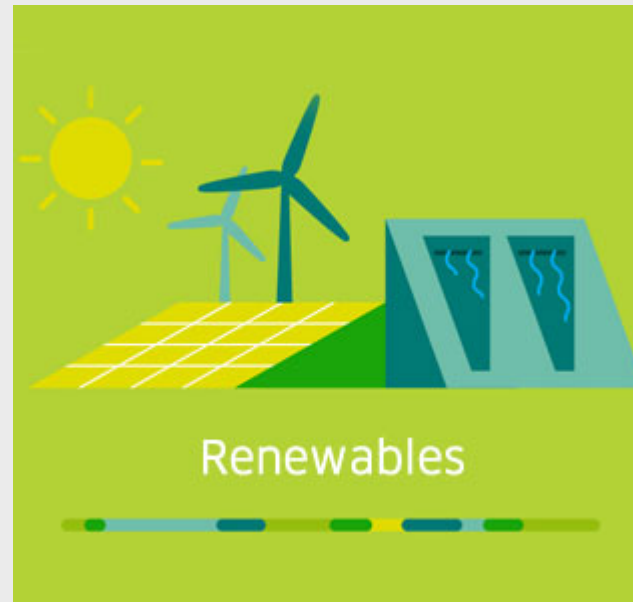




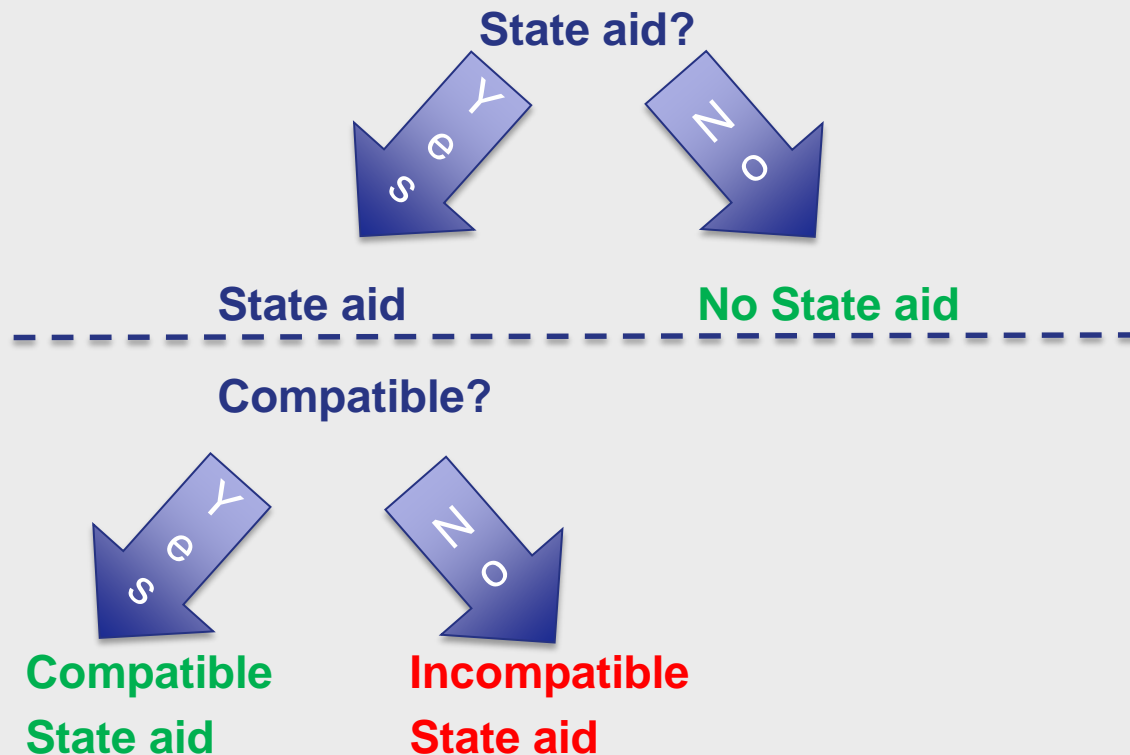
RES support and State aid rules: what is allowed and what is not!

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What is... RES support?

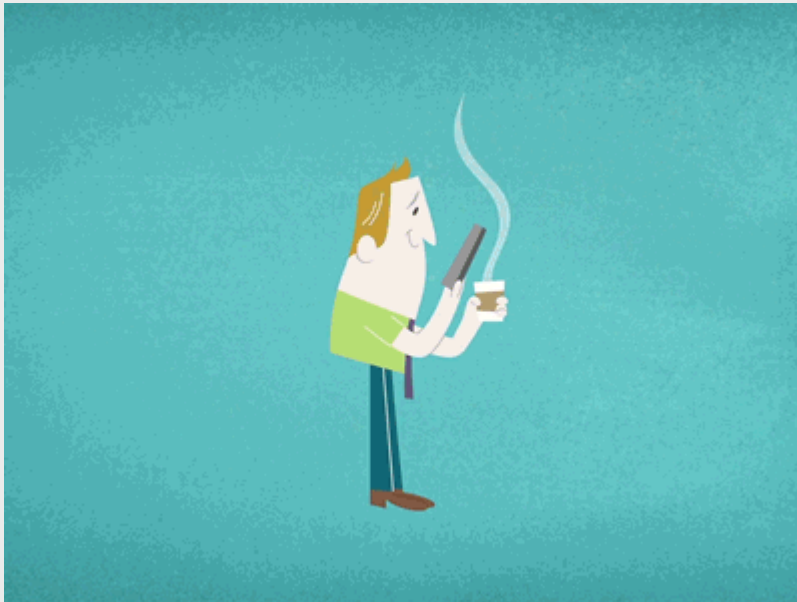


What is allowed?



What is ... State aid?

Competition law



State aid law



What is ... State aid?

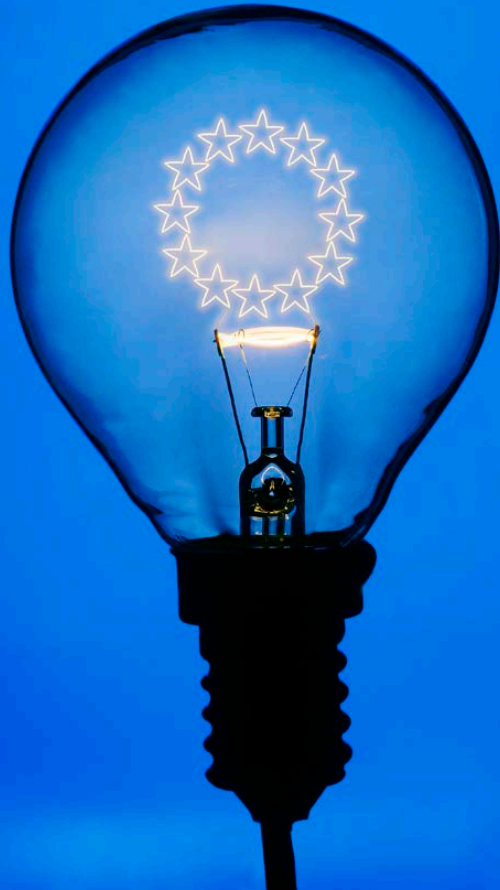


Notion of State aid

- Advantage
- Granted by the State or through State resources
- Favouring certain undertakings (selectivity)
- Liable to distort competition
- May affect trade of Network Energy between the CPs

Principle of prohibition, UNLESS justified

RES support = State aid?



Same criteria:

- ***Advantage: tariff***
- ***State/State resources: budget impact***
- ***Selectivity: RES vs conventional energy***
- ***Distorts competition***
- ***Effect on trade***

European Commission Guidelines on State aid for environmental protection and energy 2014-2020

-> Policy Guidelines 04/2015

-> Market integration of RES

Defines standards for compliance of state support to RES with State aid acquis

Only if (1) there is State aid AND (2) it is not compliant -> **ILLEGAL**



- **Competitive bidding process for determination of**
 - Privileged producers and
 - Level of support
 - Rule, with exceptions
- **Premium on top of market price**
 - Except for small producers
- **Balancing responsibility**
 - in case of liquid IDM

Competitive bidding process



- *For NEW projects*
- *For ALL technologies*
- *Except for small installations*
- *Except for limited circumstances*

Mandatory competitive bidding process

- > **predictability**
- > **market integration**
- > **driving level of support down**



Competent authority: national State aid authority

Consultation of ECS under Art. 2 of Dispute Settlement Procedures

-> Stand-still obligation – otherwise ILLEGAL

The background is a satellite-style image of the Earth at night, showing city lights. Overlaid on this are numerous glowing blue lines that represent energy transmission paths, connecting various points across the globe.

*Thank you
for your attention!*

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CHECKLIST

- **Objective of common interest**
- **Need for State intervention**
- **Appropriateness**
- **Incentive effect**
- **Proportionality**
- **Avoidance of undue negative effects on competition and trade**

ECJ's decision – what happened so far...



Procedural steps:

25/11/2014 Commission decision on aid scheme (SA.33995) finding that (i) the support for the production of electricity from RES and mine gas and (ii) the special compensation scheme to reduce the EEG surcharge for energy-intensive users constitute State aid, but are compatible with the internal market

Action for annulment by Germany

10/05/2016 General Court judgment dismissing the action (all three pleas: imputability, advantage, State resources) (T-47/15)

Appeal by Germany

28/03/2019 Court of Justice judgment setting aside the GC judgement and annulling the Commission decision (C-405/16P)



Main features:

„Law revising the legal framework for the promotion of electricity production from renewable energy“ (EEG 2012) – in force from Jan 2012 to July 2014

- Network operators (DSOs) required to connect RES installations, feed that electricity into their network, transmit it and distribute it by way of priority, make to the RES operators a payment that is laid down by law – alternatively, RES operators sell directly to the market and require the network operator to pay them a market premium
- DSOs required to transmit RES electricity to the TSOs – TSOs required to pay the DSOs the equivalent of the payments and market premiums
- Nationwide compensation mechanism: each TSO that has fed in and paid for a quantity of RES electricity greater than the quantity provided by electricity suppliers to final customers in its area, can claim vis-à-vis other TSOs an entitlement to compensation corresponding to the difference – in financial form (not physical exchange of electricity flows) – 3 out of 4 TSOs concerned are private undertakings

ECJ's decision – The German scheme



- TSOs required to sell the RES electricity which they fed into their network on the spot market of the electricity exchange – if price does not cover the financial burden imposed on them, they are entitled to require the suppliers to the final customers to pay them the difference (EEG surcharge)
- Suppliers not obliged to pass EEG surcharge to the final customers, it does not prevent them from doing so – do it in practice
- Cap the amount of the EEG surcharge that may be passed on by electricity suppliers to two specified categories of customers: electricity intensive undertakings in the manufacturing sector and railways
- Set of obligations requiring the provision of info and publication that are imposed on RES operators, network operators and electricity suppliers, in particular vis-à-vis TSOs and the Federal Network Agency (BNetzA) and series of transparency obligations owed specifically by TSOs + powers of supervision and control of BNetzA in respect of DSOs and TSOs



Advantage must be granted directly or indirectly through State resources and be attributable to the State

- Attributable to the State: public authorities involved in adoption
- Granted directly by the State or through State resources and granted by public or private bodies established or designated by the State to administer aid



News on:

- obligation to pass surcharge on to final customers
- power of disposal over the funds generated by the surcharge
- public control over TSOs