

Concern: Existing EU legislation (renewables directive) threatened by DG COMP Regulation

Brussels, 9 July 2013

Dear Commissioner Almunia,

First of all I would like to thank you for your time spent recently in Strasbourg.

At our meeting we discussed the Draft General Block Exemption Regulation (“the Draft”) prepared by your services and currently in a consultation process. I brought to your attention the fact that its Article 34(8) jeopardises the Renewables Directive (2009/28) by attacking some of its fundamental principles. Article 34 (8) of the Draft stipulates that in order to benefit from the exemption from the notification obligation according to Article 108 TFEU, and as an alternative to the exemption for investment aid set out in Articles 34(4) to 34(7), that one specific type of support scheme should be introduced, i.e., *“aid shall be granted in a genuinely competitive, technology neutral bidding process”*. Further, it seems that Member States are encouraged to give up their national support schemes and introduce joint support schemes as *“the bidding process shall be open to bidders from all EEA countries. Member States shall ensure that a cooperation mechanism is in place with the countries in which bidders may be located.”*

With those suggestions, the Draft undermines some of the main principles of the Renewables Directive to which Member States and European Parliament agreed to commit:

1. The Article 3(3) of the Renewables Directive introduces national targets, which shall be achieved by national support schemes or the use of cooperation mechanisms. Member States agreed to national targets, only because in return they got the freedom to design national support schemes fitting best to their national context;
2. Cooperation mechanisms are voluntary instruments which Member States can use to achieve their targets, but are under no obligation to use. Cooperation is thus thought to offer an alternative for more cost-effective achievement of the national targets;
3. Joint systems can be put in place between a number of Member States to ensure cross border exchanges, but again Member States have no obligation to use them. They enjoy discretion and will have to define the terms of their cooperation.

Now, while it is understood that Article 34(8) of the Draft does not legally oblige but only incentivizes Member States to introduce such a technology neutral system by exempting them from the general notification procedures, this is in conflict with the

provisions and rationale of the Renewables Directive. The Directive is the result of a political compromise. It is based on the principle that Member States can decide on their preferred national support scheme and support various renewable energy technologies with different and well targeted measures, taking due account of their specific national potentials as well as the development and the costs of the support.

Similarly rewarding Member States with an exemption from the notification obligation by "*ensuring that cooperation mechanisms are in place*" contradicts the principle and the wording of the Renewables Directive. The cooperation mechanisms were introduced into the Directive to allow Member States to reach their binding national targets – and in particular the last bit, which was understood to be potentially the most expensive – in a cost-effective way. They were not intended to force them into cooperation and joint support schemes. Rather, each Member State has its own national target and its individual obligation to reach that target under the Directive, but it can decide on how to proceed to fulfil this specific obligation by 2020. However, those Member States selling under the cooperation mechanism need to ensure first that they are on track to achieve their national target.

Further, Article 34(8) of the draft is asking Member States to introduce a system which has very little experience so far. A technology-neutral auctioning system similar to what is described in the Draft only exists in the Netherlands since recently. The Dutch Minister for Economic Affairs, Mr Kamp, stated on 13 June 2013 in the Dutch Parliament that it is far from ideal since it fails to support those technologies with reduced market readiness. He particularly referred to offshore wind which the Netherlands needs to achieve its binding 2020 target under the Renewables Directive. However, offshore development stagnates due to the current technology-neutral bidding system.

Apart from this rather negative example of such a system, there seems to be no other real experience therefore it is very surprising that the Commission suggests this one rather than another one such as Feed in Tariffs or Premiums which have proven to be most effective. Accordingly, one may even wonder whether this provision fits into the General Block Exemption Regulation at all, which is in the end intended to exempt measures of which the Commission knows from experience that they are normally compatible with the internal market.

I therefore urge you, Mr Almunia, to very closely reconsider and revise the work of your services. In particular, the reference to a technology-neutral tendering scheme should be taken out, as there is little experience with such a system and as incentivizing one system over another goes against the set-up and rationale of existing EU law, in this case the Renewables Directive.

I hope we can continue our discussion in the coming weeks and months in a fruitful and constructive manner.

Sincerely yours,

Claude Turmes