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What next for renewable energy support schemes in the Republic of Ireland? The EU State Aid Guidelines


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REFIT qualification deadlines will soon become challenging for renewable energy projects which do not commence construction in the short term. With 2020 EU binding targets still to be met, the question of what the next round of renewable support for electricity generation from renewable energy beyond REFIT 2 and REFIT 3 will look like is looming large.

What is relatively clear is that any next phase of renewable energy support in Ireland by reference to the currently adopted form and structure of renewable support through the REFIT feed-in tariff will have to be scrutinised for compatibility, and ultimately potentially changed, in the context of the EU State aid rules. In this regard, State aid is only permitted EU State aid if certain conditions are met.

On 9 April 2014, the European Commission adopted new guidelines on state aid for environmental protection and energy (the Guidelines). From 1 July 2014 the European Commission has been assessing new and pending notified State Aid measures in accordance with the criteria set out in the Guidelines. For those schemes which do not fall within the General Block Exemption Regulation (and which therefore do not need Commission approval for implementation) the Guidelines (and indeed the General Block Exemption Regulations itself) are a very clear indication of how the Commission will expect Member States to design renewable energy support schemes.

The Guidelines extend existing guidelines to cover, in particular, state aid to energy infrastructure projects, energy efficiency measures, generation adequacy and energy market capacity mechanisms and support for energy intensive users. They also set out a framework for operating aid for the production of electricity from renewable sources. The stated aim in the case of renewable energy is to better integrate renewables into the internal electricity market in a gradual way, limiting support to what is truly necessary.

Essentially the Guidelines will see feed-in tariffs such as the REFIT schemes progressively replaced by competitive bidding processes and feed-in premiums that will increase cost effectiveness and limit distortions of competition.

Implementation of the Guidelines
In order to be considered compatible with the internal market, aid for electricity from renewable energy sources must meet the criteria in the Guidelines. Some key features are:

- Aid schemes will be authorised for a maximum period of 10 years;
- In 2015-2016, Member States will be required to start implementing competitive bidding procedures for 5 per cent of their new capacity from renewables;
- From 1 January 2016, support instruments must be market premiums (a top up on the market price) for electricity sold by generators directly into the market, beneficiaries are subject to standard balancing responsibilities (unless no liquid intraday market exists) and measures must be put in place to ensure no negative price incentivisation;
- From 1 January 2017 aid for electricity from renewable sources must in principle be granted in a competitive bidding process and which must be open to all generators from renewable sources on a non-discriminatory basis. There are certain exceptions to the competitive bidding process requirement including where a competitive process would lead to higher support levels or would result in low project realisation rates. There are also certain provision which allow bidding processes to limited to specific technologies;
- Small installations or technologies in an early stage of development can be exempted from participating in competitive bidding processes. The Guidelines define small installations as those producing less than 6 MW of wind power (or 6 generation units), or 1 MW of power from other renewable sources, such as solar or biomass;
- Small installations that are below 3MW or 3 generation units (for wind) or 500kW (for other sources) can continue to benefit from feed-in tariffs.

Impact on current REFIT Schemes
The Commission will not retroactively apply the Guidelines to any individually notifiable aid granted on the basis of an aid scheme that has already been approved. Therefore the Guidelines should not affect aid currently being paid in the existing approved REFIT schemes. This is to maintain investors' legitimate expectations on the returns on existing investments. However, any changes to existing schemes (e.g. extension or adaption) would need to be reviewed in the context of the Guidelines and the requirements under the EU State aid rules generally.

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