



POLICY GUIDELINES

by the Energy Community Secretariat

on the Applicability of the Guidelines on State Aid for Environmental Protection and Energy 2014-2020

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The main objective of the Energy Community Treaty is creating undistorted energy markets without internal frontiers. In order for this objective to be achieved, practices that impede free competition among undertakings on this market are generally prohibited by the Treaty. In particular, Article 18(1)(c) of the Treaty provides that any public aid which distorts or threatens to distort competition by favouring certain undertakings or certain energy resources is to be considered incompatible with the proper functioning of the Treaty insofar as it may affect trade of Network Energy between the Contracting Parties. Article 19 of the Treaty extends the application of this provision to public undertakings and undertakings to which special or exclusive rights have been granted.

1. Purpose

EU State aid law envisages that in certain cases, State aid may be considered compatible with the functioning of the EU Treaty (Article 107(3) Treaty on the Functioning of the European Union – “TFEU”). In particular, the European Commission may consider compatible with the functioning of the EU Treaty State aid that facilitates the development of certain economic activities, where such aid does not adversely affect trading conditions to an extent contrary to the common interest. In order to ensure the transparency and predictability of its decisions, the European Commission periodically establishes guidelines laying down the criteria for the assessment of such aid. In the field of energy and environment, the European Commission published the Communication “*Guidelines on State aid for environmental protection and energy 2014-2020*”¹ addressed to the European Union Member States in June 2014. These Guidelines set out the principles that will guide the future enforcement of EU state aid rules and set the conditions under which State aid for environmental protection and energy objectives may be considered compatible with the functioning of the EU Treaty. They codify the approach that will be taken by the Commission in assessing state aid cases in these areas.

In the Energy Community, enforcement of State aid is more complex than in the EU. The State aid rules corresponding to Article 107 TFEU are to be applied and enforced by national authorities of the Contracting Parties, as well as by the Secretariat in initiating dispute settlement cases for non- or wrong enforcement against a Contracting Party under Article 90 of the Treaty, or jointly in the scope of the preliminary reference procedures established by (new) Article 2 of the Dispute Settlement Rules of Procedure.

In that respect, Article 18(2) of the Treaty (“*Any practices contrary to this Article shall be assessed on the basis of the criteria arising from the application of the rules of Articles ... 87 of the Treaty establishing the European Community [now Article 107 TFEU]*” which is displayed in full in Annex III to the Treaty), Article 94 of the Treaty as well as Article 2 of the Dispute Settlement Rules of Procedure establish a strict homogeneity principle as regards the application of EU and Energy Community rules. This principle obliges both national enforcement authorities and the Energy Community Secretariat to ensure equal conditions of competition and a uniform application of State aid provisions throughout the Energy Community, based on precedence established by EU enforcement institutions.

2. Policy Guidelines

The Secretariat, for its part, will follow the considerations and requirements set out in the European Commission’s Energy and Environmental State aid Guidelines when assessing the compatibility of environmental and energy aid with the functioning of the Energy Community

¹ Official Journal, C 200/01, 2014

Treaty under Article 18(1)(c) and 18(2) of the Treaty. By the present Policy Guidelines, the Secretariat thus endorses the Energy and Environmental Guidelines and will make them the point of reference for its own enforcement practice in the assessment of State aid cases in the sectors covered by the Guidelines to the extent they fall within the scope of the Treaty. The Secretariat further considers that Energy and Environmental Guidelines are to be followed by national enforcement authorities in order to ensure their uniform and homogeneous application in the entire Energy Community. The present Policy Guidelines are thus of a declaratory nature, as the legal obligation to apply them on both national authorities and the Secretariat *ipso iure* follows from Article 18 of the Treaty.

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