



## BirdLife Europe's Response

### to Consultation on the Draft Guidelines on environmental and energy State aid for 2014-2020

*Ref.: "HT 359 - Consultation on Community Guidelines on State Aid for Environmental Protection"*

*Transparency register ID of the respondent: 1083162721-43*

**12 February 2014**

BirdLife Europe wants to highlight the need to ensure that state aid for the environment and particularly for energy is strongly in line with EU's goals to protect the environment and implement resource efficiency. While transition to renewable energy systems is a goal of utmost importance, it needs to be ensured that the transition happens in harmony with nature and that only sustainable forms of renewable energy are supported. With necessary safeguards in place the transition should be enabled by allowing flexibility in the design of support schemes best suited for the member states.

**Summary of BirdLife Europe's key comments** on the draft Guidelines is presented here with more detailed explanations outlined further below.

- The Guidelines must do more to ensure eligible state aid **is compatible with the EU environmental acquis**, and the Commission must commit to monitoring and enforcing compatibility with regard to support schemes and in the compilation of lists of European 'projects of common interest'.
- **Damage to biodiversity** and the natural environment (not just 'pollution') must be recognized in definitions of 'environmental protection' 'eco-innovation' and 'negative externalities'.
- Additional safeguards are needed to ensure **projects qualifying as Projects of Common Interest, or as eligible energy infrastructure**, are deliverable within existing environmental safeguards for habitats and species.
- **Minimum efficiency standard should be required for all applications using biomass** in order to be compatible with the Guidelines. This should as a minimum be in line with other EU

legislation like the Renewable Energy Directive or the Energy Efficiency Directive should be enforced.

- **Aid to co-firing of biomass** in coal-fired power plants should be considered as incompatible with the Guidelines as this is squarely against environmental protection and sustainability.
- Support schemes for bioenergy and projects using biomass should be accompanied by a resource procurement and conversion plan, subject to mandatory environment assessment, **that ensures resource efficiency and cascading use of biomass**, biofuel and bioliquid feedstocks. In addition, installations using biomass, biofuel or bioliquid or waste, should prove that they comply with the waste hierarchy principle to qualify for state aid.
- Any aid, including operating aid, **to biofuels and bioliquids** derived from land-based crops, i.e. biofuels and bioliquids produced from cereal and other starch rich crops, sugars, oil crops and other energy crops grown on land should be consider incompatible with the Guidelines. Advanced biofuels should also meet with strict sustainability criteria in order to be compatible.
- Energy efficiency measures are still severely overlooked in EU's climate and energy policies and should be further strengthened, also for the sake of energy security and economic resilience. **The aid intensity for energy efficiency measures should be increased**, at least to the current levels.
- **Feed-in-tariffs are the best instrument to deploy renewable energy sources.** They are particularly needed as a way to grant aid to small installations of citizens, farmers, municipalities, SMEs or co-operatives.
- The **distinction between more and less deployed technologies is not helpful** and should be removed. However a useful distinction can be made between variable and non-variable renewables for purposes of defining eligibility for aid and responsibility for balancing costs.
- **Technology neutrality is not a useful concept in supporting renewable energy**, and will tend to raise costs and reduce competition among technologies. Member States must be free to support a portfolio of technologies that they consider suitable for their national conditions.
- **Tendering/bidding for supports should not be required as any benefits are likely to be outweighed by costs.** Bidding tends to favour large investors over small scale projects, is prone to strategic bidding, and can create perverse incentives on developers and decision makers to hurry consenting for sub-optimal and environmentally damaging projects.
- If aid for **generation adequacy** will be allowed strict conditions should apply in order to make sure the aim of phasing out subsidies for fossil fuels is not contradicted.
- It needs to be ensured the procedures for considering complaints and comments about state aid related applications and decisions **takes into considerations also complaints made by other organisations than direct competitors**, including civil society organisations.

## 1. COMPLIANCE OF ELIGIBLE STATE AID WITH OTHER EU LEGISLATION

BirdLife Europe welcomes the inclusion of a clear statement in the draft guidelines at Paragraph 7 that state aid measures must be in compliance with the EU environmental acquis.

"To avoid that State aid measures lead to environmental harm, in particular Member States must also ensure compliance with EU environmental legislation and carry out an environmental impact assessment when it is required by EU law and ensure all relevant permits."

However this, in itself, is just a statement that the law must be respected. In order to ensure the desired outcome, the Commission should actively monitor and enforce compliance with this statement. The guidelines should clearly state that where a support scheme leads to infringements of EU environmental law then eligibility for aid will be withdrawn. Particular attention should be paid to state aid for small hydropower plants and their compliance with the Water Framework Directive<sup>1</sup> and its article 4(7) which lays down criteria in relation to allowing new modifications of bodies of water, as well as the Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.

Mechanisms are also needed to ensure that lists of projects promoted by the EU as 'Projects of Common Interest' (and thereby eligible for aid) are compiled with care to ensure these do not include projects that one can reasonably assume to be incompatible with the environmental *acquis*. A scientifically robust environmental assessment process, with input from national environmental authorities and NGOs, should inform compilation of PCI lists to ensure aid does not go to projects that will lead to environmental harm.

We request that the Commission should adjust the guidelines to make it clear that eligibility aid is dependent upon these safeguards ensuring compliance with paragraph 7.

It is also essential that the Guidelines must not rule out renewable energy support schemes that are permitted under the Renewable Energy Directive.

## 2. DAMAGE TO BIODIVERSITY AND THE NATURAL ENVIRONMENT

The guidelines must recognize that reducing greenhouse gas 'pollution' is not the only environmental consideration to be taken into account in energy aid. Energy investments can also lead to damage to the physical and natural environment, or measures can be taken to minimize these harms, which are not internalized in market prices.

In line with the intention in Paragraph 7 to ensure compliance with the EU environmental law, the definitions of pollution and environmental protection must be amended to include damage to/protection of the natural environment.

This is in line with sustainable growth as defined in the Europe 2020 strategy. "Resource efficient Europe", as one of the seven flagship initiatives, aims to create an economy that helps to, inter alia, "fight against climate change and limit the environmental impacts of resource use." It is important that in the move to include energy and energy infrastructure in the environmental state guidelines that efforts to correct a market failure (carbon emissions) do not inadvertently exacerbate another market failure (environmental impacts of resource use).

---

<sup>1</sup> Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000

This requires amendments to several definitions, for example in Paragraph 18, damage to the natural environment and biodiversity should explicitly be mentioned in the definitions which are determining the overall goal of environmental and energy aid. Suggested wording is provided below.

(18) For the purposes of these Guidelines the following definitions apply.

(a) *environmental protection* means any action designed to remedy or prevent damage to physical surroundings, the natural environment and biodiversity, or natural resources by a beneficiary's own activities, to reduce the risk of such damage or to lead to more efficient use of natural resources, including energy- saving measures and the use of renewable sources of energy;

...

(d) *eco-innovation* means all forms of innovation activities resulting in or aimed at significantly improving environmental protection. Eco-innovation includes new production processes, new products or services, and new management and business methods, whose use or implementation is likely to prevent or substantially reduce the risks for biodiversity and the natural and physical environments, pollution and other negative impacts of resources use, throughout the life cycle of related activities.

Paragraph 41(a) should be amended to reflect the failure of market prices to capture direct damage to nature and the environment (not only damage via 'pollution').

**41(a) Negative externalities** are most common for environmental aid measures and arise when pollution or damage to biodiversity or the environment is not adequately priced, i.e. the firm in question does not face the full cost of damage or pollution.... Therefore undertakings typically have insufficient incentive to reduce their level of damage or pollution or to take individual measures to protect biodiversity and the environment.

The Guidelines should also encourage innovation in technologies that have significant potential to enable low carbon generation without negative impacts on biodiversity and the natural environment.

Paragraph 119 states "specific aid measures may be needed to bring forward less deployed renewable technologies that can contribute to the decarbonisation of the energy sector in the longer term.". A footnote here states "Considerations could be given to environmental and technical performance criteria that characterise the long-term prospects of innovative technologies.". We welcome this recognition of the importance of innovation to reduce environmental impacts, but it should be clearer that reducing impacts on nature (not just reducing greenhouse gas emission) is an important consideration.

### 3. AID TO ENERGY INFRASTRUCTURE

BirdLife Europe welcomes the recognition of the importance of energy infrastructure in the transition to a low carbon energy system with a high renewable energy contribution. However we are concerned that insufficient safeguards are in place to ensure that Projects of Common Interest and other energy infrastructure projects receiving state aid are compatible with (i) the EU environmental acquis and (ii) EU 2020 and 2030 greenhouse gas emission targets and (iii) European commitment to phase out support for fossil fuels.

The definition of 'energy infrastructure' in the guidelines includes gas and oil pipelines. Enabling supports for these infrastructures directly contradicts commitment to phasing out support to fossil fuels. Gas will continue to be needed for electricity generation as a transitional balancing technology as the share of variable renewables increases. However greater interconnection and energy storage are the long term solutions here, not more gas imports and dependence on gas fired generation.

We are concerned that the guidelines in Section 5.8 are too generous in stating that projects defined as 'energy infrastructure' meet the eligibility tests. In particular we urge the Commission to ensure support is ruled out for projects that are incompatible with the Union's climate objectives. For example in the selection of gas 'Projects of Common Interest' in 2013 the Commission's Regional Groups assumed a 'very aggressive' level of demand for gas in Europe to 2020, according to the consultants involved<sup>2</sup>. This greatly exceeds the level of demand assumed by the Commission itself, and is not compatible with the Union's climate objectives. Yet PCIs are automatically eligible for aid under paragraph 191.

Additional safeguards are also needed to ensure that aid to energy infrastructure is compatible with sustainable growth as defined in "Resource Efficient Europe" with its commitment to economic growth that helps to "limit the environmental impacts of resource use".

Projects of Common Interest and other eligible energy infrastructure projects may have significant environmental impacts, and it is vital that Union policies do not inadvertently damage biodiversity and associated public goods in seeking to address other market failures. Additional safeguards are needed to ensure projects qualifying as PCIs, or as eligible energy infrastructure, are deliverable within existing environmental safeguards for habitats and species. The proposals above on definitions of environmental protection and externalities (in Section 2) are essential here.

#### **4. MINIMUM EFFICIENCY STANDARDS FOR BIOMASS**

##### **Biomass in Residential, Commercial and Industrial Applications**

The Guidelines should consider as incompatible any aid to residential, commercial and industrial applications using biomass/bioliquids that do not meet minimum efficiency standards set out in the Renewable Energy Directive, namely:

"In the case of biomass, Member States shall promote conversion technologies that achieve a conversion efficiency of at least 85% for residential and commercial applications and at least 70% for industrial applications.

In the case of heat pumps, Member States shall promote those that fulfil the minimum requirements of eco-labelling established in Commission Decision 2007/742/EC of 9 November 2007 establishing the ecological criteria for the award of the Community eco-label to electrically driven, gas driven or gas absorption heat pumps."<sup>3</sup>

The Guidelines should explicitly reference these minimum efficiency standards.

---

<sup>2</sup> Booz and Company "MARKET ANALYSIS AND PRIORITIES FOR FUTURE DEVELOPMENT OF THE GAS MARKETS AND INFRASTRUCTURE UNDER THE NORTH SOUTH GAS INTERCONNECTIONS IN WESTERN EUROPE, SOUTH EASTERN EUROPE AND THE BALTIC SEA REGION" dated April 18 2013.

<sup>3</sup> Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC [hereinafter "RED" for Renewable Energy Directive], Article 13(6).

## **Biomass in Large-Scale Power and Cogeneration**

In addition to considering as incompatible any aid to cogeneration unless it is “high-efficiency cogeneration” as set out in Annex II(a) of Directive 2012/27/EU,<sup>4</sup> the *Guidelines* should consider as incompatible any aid to large-scale power plants that do not capture useful heat – i.e. installations not providing cogeneration. This will provide incentives to craft support schemes that only encourage construction of high-efficient cogeneration facilities providing electricity and heating—while also providing investment subsidies to retrofit existing ones—and avoid locking in large-scale power plants not serving this dual function.

## **Biomass in District and Individual Heating and Cooling**

The *Guidelines* appropriately consider as incompatible any aid to district heating and cooling unless it is “efficient district heating and cooling” as defined in Directive 2012/27/EU.<sup>5</sup> The *Guidelines* should, however, also consider as incompatible any aid to individual heating and cooling unless it is efficient individual heating and cooling as defined in Directive 2012/27/EU.<sup>6</sup>

## **5. BIOMASS IN CO-FIRING**

The *Guidelines* should consider as incompatible aid to co-firing of biomass in coal-fired power plants as this is squarely against environmental protection and sustainability. In tandem with this, any provision of aid to co-firing serves to prolong reliance on coal-based infrastructure and reduces finite financial resources available to renewables that do not require coal, such as solar and wind. The ETS already promotes co-firing through the carbon-neutrality assumption applied to bioenergy. This neutrality is a myth, as demonstrated in several authoritative scientific papers and technical reports.<sup>7</sup> ETS support is inappropriate, and certainly no further aid should be provided to co-firing.

Aid to co-firing of biomass in coal-fired power plants, in general, contradicts the objective of phasing out environmentally harmful subsidies for fossil fuels, as mentioned in paragraph 205. Aid to co-firing in coal-fired power plants is also easily used to carry out activities that otherwise would have occurred in a restricted or different manner under other EU legislation, such as under the Industrial Emissions Directive.<sup>8</sup>

## **6. RESOURCE EFFICIENCY FOR BIOMASS, BIOFUELS AND BIOLIQUIDS**

---

<sup>4</sup> See Directive 2012/27/EU, Annex II(a) (high-efficiency co-generation is cogeneration production providing primary energy savings of at least 10% compared with the references for separate production of heat and electricity).

<sup>5</sup> See Directive 2012/27/EU, Article 2(41) (efficient district heating and cooling means a district heating or cooling system using at least 50% renewable energy, 50% waste heat, 75% cogenerated heat or 50% of a combination of such energy and heat).

<sup>6</sup> See Directive 2012/27/EU, Article 2(42) (efficient individual heating and cooling means an individual heating and cooling supply option that, compared to efficient district heating and cooling, measurably reduces the input of non-renewable primary energy needed to supply one unit of delivered energy within a relevant system boundary or requires the same input of non-renewable primary energy but at a lower cost, taking into account the energy required for extraction, conversion, transport and distribution).

<sup>7</sup> See e.g. European Environment Agency, Scientific Committee, *Opinion of the EEA Scientific Committee on Greenhouse Gas Accounting in Relation to Bioenergy* (15 September 2011); Joanneum Research, *The Upfront Carbon Debt of Bioenergy* (May, 2010), pp. 41-43.

<sup>8</sup> Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control).

The Guidelines should promote resource efficiency and cascading use of biomass, biofuel and bioliquid feedstocks. The Guidelines should support the aim outlined in the Commission’s recent Communication on “A policy framework for climate and energy in the period from 2020 to 2030” to develop an improved biomass policy to maximize resource efficient use of biomass<sup>9</sup>. This can be achieved via a two-pronged approach toward providing aid.

First, the overall support scheme (and any modifications thereto) should be accompanied by a resource procurement and conversion plan, subject to mandatory environmental assessment, that ensures resource efficiency and outlines cascading use of biomass, biofuel and bioliquid feedstocks. This plan and accompanying assessment should include *inter alia*: (i) an analysis of how to maximize the value of the primary biomass, biofuel or bioliquid feedstocks, i.e. how the raw material can fulfil material, nutritional or other needs *prior* to being used for energy purposes; and (ii) a hierarchy that ensures resource efficiency and cascading use of raw materials, similar to the waste hierarchy does for waste.<sup>10</sup> To this end, the *Guidelines* should require that support schemes be supported by a resource procurement and conversion plan for bioenergy, subject to a mandatory strategic environmental assessment (SEA) specifically reviewing resource efficiency and cascading use, that outlines measures promoting these objectives. The *Guidelines* should and thereafter consider as incompatible any aid for biomass, biofuel or bioliquid installations or projects that do not conform to the resources procurement and conversion plan.

Second, projects using biomass, biofuels or bioliquids should be subject to an environmental impact assessment that specifically addresses compliance with resource efficiency and cascading use of the overall support scheme.<sup>11</sup> This should include a project-specific resource procurement and conversion plan demonstrating how the project will source its feedstocks and ensure conversion efficiency in compliance with those objectives and measures, including for feedstocks originating from outside the European Union, where appropriate. The *Guidelines* should thereafter consider as incompatible any aid for biomass, biofuel or bioliquid projects that cannot demonstrate compliance with the resource-efficiency and cascading-use objectives and measures of the overall support scheme, in particular when sourcing feedstocks and converting the biomass, biofuel or bioliquid to energy.

The *Guidelines* should also consider as incompatible any aid for biomass, biofuel or bioliquid installations or activities using waste that does not comply with the waste hierarchy and national waste prevention and management legislation – not just waste in cogeneration or aid for waste management.<sup>12</sup> Ensuring wastes conform to the waste hierarchy requires prevention, preparation for re-use and recycling *before recovery for energy purposes*.<sup>13</sup> Annex II of the Waste Framework Directive (WFD) sets out a non-exhaustive list of recovery operations, and specifically includes “use principally as a fuel or other means to generate energy.”<sup>14</sup>

In the European Union, under the WFD, the management of wastes is subject to national waste management plans. National waste management plans—adopted by Member States and evaluated

---

<sup>9</sup> COM(2014) 15 final

<sup>10</sup> Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives [hereinafter “WFD” for Waste Framework Directive], Article 4.

<sup>11</sup> See generally Directive 2011/92/EU.

<sup>12</sup> See Draft *Guidelines*, paragraphs 140 and 153-160.

<sup>13</sup> WFD, Article 4; see also WFD, Article 3(15) (“recovery” refers to operations where the waste replaces materials that would otherwise have been used to fulfill a particular function in the plant or in the wider economy, such as oil as a fuel in transportation).

<sup>14</sup> WFD, Article 3(15) and Annex II.

and revised no later than every six years—will serve as the basis for this determination of compliance with the waste hierarchy.<sup>15</sup> Under national waste management plans, Member States may only depart from the waste hierarchy for specific waste streams where justified by lifecycle thinking on overall impacts of the generation and management of such waste.<sup>16</sup> In addition to expanding to cover all waste used for energy purposes, the *Guidelines* should also verify actual compliance with the waste hierarchy, specifically through independent verification and certification of compliance of wastes with Article 4 of WFD and national waste management plans – or a comparable programme on waste prevention and management for installations processing or using waste originating from outside the European Union.

## 7. AID TO BIOFUELS AND BIOLIQUIDS

The European Parliament and Council are currently considering a legislative proposal to amend the Renewable Energy Directive and Fuel Quality Directive<sup>17</sup> – the result of a mandate to the Commission to review the indirect land-use change (ILUC) impact of biofuels and bioliquids. The broad scientific consensus is that ILUC is unavoidable for land-based crops, i.e. it is not a question of whether ILUC occurs but only the degree of its significant impact.<sup>18</sup>

Indirect deforestation and conversion of grasslands and wetlands, in addition to peatland drainage, resulting from biofuels and bioliquids derived from land-based crops undermines their climate performance and, in many instances, can make them worse than the fossils they are replacing. In addition, it impacts ecosystems, biodiversity and water quality, among other things. Public funding should therefore only be made available to biofuels and bioliquids that do not contribute to ILUC, and hence the *Guidelines* should consider as incompatible any aid, including operating aid, to biofuels and bioliquids derived from land-based crops, i.e. biofuels and bioliquids produced from cereal and other starch rich crops, sugars, oil crops and other energy crops grown on land

## 8. AID FOR ENERGY EFFICIENCY

The proposed levels for aid intensity to energy efficiency are the lowest of all environmental and energy aid intensities (from 20 to 40%). This also represents a significant reduction from the current guidelines and poorly reflects the fact that energy efficiency is the EU's most effective lever to strengthen the block's energy security and economic resilience while reducing greenhouse gas emissions. The aid intensity should be increased, at least to the current levels.

Furthermore, the competitive bidding process is not a suitable method of allocating aid for energy efficiency measures. Participating in the process requires significant resources and administrative capacity from the undertaking and therefore favours large companies over small.

## 9. TYPE OF SUPPORT SCHEMES

BirdLife Europe considers the Guidelines to be excessively prescriptive in defining which kinds of support schemes are eligible. The Guidelines should provide much greater flexibility for the type of

---

<sup>15</sup> WFD, Articles 28-33.

<sup>16</sup> WFD, Article 4(2).

<sup>17</sup> COM(2012) 595.

<sup>18</sup> See International Scientists and Economists Statement on Biofuels and Land Use, available at [http://www.ucsusa.org/assets/documents/global\\_warming/International-Scientists-and-Economists-Statement-on-Biofuels-and-Land-Use.pdf](http://www.ucsusa.org/assets/documents/global_warming/International-Scientists-and-Economists-Statement-on-Biofuels-and-Land-Use.pdf)



support scheme. This is necessary in order to maintain national sovereignty and to address adequately differing characteristics of national energy systems, the availability of natural resources and the deployment of a sustainable mix of technologies for renewable energy.

In some countries such as Germany, feed-in-tariffs, due to their openness, long-term certainty and isolation from market dynamics (thanks in part to the Renewable Energy Directive), have allowed consumers and citizens to invest in their own energy systems, changing the ownership structure of the energy system and reducing power control from the incumbent large energy companies. Feed-in-tariffs thus remain the best instrument to deploy renewable energy sources at small scale.

Feed-in-tariffs have proven a successful market-pull instrument to bring non deployed technologies close to maturity in a relative short time, ensuring a fast cost decrease through economies of scale and optimization of value chain for the involved sectors.

Feed-in-tariffs, due to their openness, long-term certainty and isolation from market dynamics (thanks in part to the Renewable energy directive), have allowed consumers and citizens to invest on their own energy systems, changing the ownership structure of the energy system and reducing power control from the incumbent. Feed-in-tariffs are the best instrument to deploy renewable energy sources.

## **10. DEFINITION OF DEPLOYED TECHNOLOGY**

BirdLife Europe considers the definitions of deployed and less deployed technologies, as presented in the Guidelines, to be unhelpful in the debate as it sets a wrong differentiation. Each market and technology needs differentiated approaches. A specific technology cannot be considered mature once a specific penetration level is achieved (in this case 1-3%). There are other aspects that need to be considered, as for instance, industry establishment, accessibility to equipment suppliers, local/national awareness of technologies and support instruments, enough competition, etc.

Member states should be given flexibility to choose which type of support scheme they prefer to apply to each technology.

There may be better ways to classify and differentiate instruments among technologies, for instance, difference could be apply to variable and non variable RES rather than between deploy and and less deploy. This could be especially interesting for the allocation of balancing responsibilities.

## **11. TECHNOLOGY NEUTRALITY**

Technology neutrality will not benefit the renewable energy sector in general and will induce both overcompensation of certain technologies, particularly biomass related technologies, and underinvestment of others that are less competitive.

Either only a very limited range of technologies would be stimulated (in Germany for instance only wind energy onshore) or the funding scheme would be inefficient as the cheapest technologies would earn a lot of windfall profits.

To achieve an economically and ecologically reasonable mix of different renewable energy sources renewable energy funding schemes must differentiate between and even within technologies - e.g. solar and wind yield are heavily dependent on sites, biomass availability and sustainability of resources.

The guidelines therefore must allow specific demands for nature resilient and efficient use of renewable energy. The general possibility for a requirement of a minimum of different technologies without further predefinitions mentioned in para 120b and para 129b is therefore not suitable.

The draft Guidelines (paragraph 120 b) already rightly note that there might be a need to exclude or limit a specific technology i.e. energy production using biomass from bidding process in order to limit the effects on the raw material markets. Provisions for certain technologies might thus be needed in some cases to ensure compatibility with general conditions of state aid.

## **12. BIDDING PROCESS**

In BirdLife Europe's view the bidding process does not provide any significant benefit vs. existing support allocation methodologies, but brings a large number of problems and uncertainties associate to it. The experience with the process is still too limited to make it a mandatory requirement for all aid for deployed technologies (para 120 b).

Tendering tends to facilitate market control of large companies with higher capacity to deal with administration and to bear risk. A tendering process would exclude the numerous projects where citizens and smaller communities have actively engaged in the production and selling of renewable energies. Small scale installations and communities running them would not have the ability or possibility to go through a bidding process. Many benefits flow from having communities engaged in Renewable energy, such as increased public support, mobilisation of private investment, and these would risk being lost.

Bidding systems can also create an unhelpful race between developers to get consents for projects in order to be eligible to enter a specific bidding round. This can lead to developers cutting corners with procedures such as public engagement or environmental assessments, or to undue pressure being placed on decision-makers to make consenting decisions quickly. This may reduce the quality of specific proposals, and may also be counterproductive in terms of the strategic build up of renewables industries. Some energy investments can have direct mortality effects on birds, such as wind farms and power lines. Beyond a certain threshold of additional mortality the cumulative impacts of these projects could become sufficient to drive a species to extinction. At this point further investment should cease. In this sense, additional mortality risk is a scarce resource.

Under a feed in tariff system or supplier obligation revenue is available to a developer at the time their proposal is mature. In this context it makes sense to plan for the long term, and to find good projects that maximize energy output while minimizing additional mortality risk. In contrast, under auctioning developers may look to secure available supports ahead of competitors by aiming for sites where consents can be secured most quickly, rather than supporting authorities in planning for rational, strategic development of a national industry.

## **13. AID FOR GENERATION ADEQUACY**

If aid for generation adequacy will be allowed (para 295) strict conditions should apply in order to make sure the aim of phasing out subsidies for fossil fuels is not contradicted. As a minimum, aid should not be granted for fossil fuel generation unless the MS has exhausted all less harmful options incl. demand management, diversification of RES production, interconnections and efficiency measures.

## **14. ADMISSIBILITY OF COMPLAINTS ON STATE AID**

BirdLife Europe would like to additionally highlight the need to ensure the procedures for considering complaints and comments about state aid related applications and decisions takes into considerations also complaints made by other organisations than direct competitors.

BirdLife believes that there cannot be proper scrutiny of State Aid decisions without allowing complaints and other representations to be made by non-competitors, including by civil society organisations. State Aid decisions, for example about energy-related projects, will usually result in significant environmental impacts, which can be positive or negative ones. Therefore the Aarhus Convention's Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters should be applied.

### **RESPONDENT'S CONTACT DETAILS**

#### **Stichting BirdLife Europe**

Avenue de la Toison d'Or 67 B -1060 Brussels

Tel: + 32 2 280 08 30 Fax: + 32 2 230 38 02

Email: [europa@birdlife.org](mailto:europa@birdlife.org)

Website: <http://europa.birdlife.org>

#### **Ariel Brunner**

Head of EU Policy

Tel: +32 (0)2 238 50

Email: [ariel.brunner@birdlife.org](mailto:ariel.brunner@birdlife.org)

#### **Sini Eräjää**

EU Bioenergy Policy Officer

Tel : +32 (0)2 238 5097

Email: [sini.erajaa@birdlife.org](mailto:sini.erajaa@birdlife.org)