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**Mr
Carles Esteva Mosso
Deputy Director General State Aid
Directorate-General for Competition
European Commission**
Via Email

**Cc: Anna Colucci, Director Market and Cases, Energy and Environment
Paula Abreu Marques, Head of Unit ENER C1**

21.12.2020

Violation of the Renewable Energy Act 2021 Reform against EU State Aid Law

Dear Mr Esteva Mosso,

We would like to draw your attention to a provision in the German Renewable Energy Act 2021 (EEG 2021) which, in our view, is not compatible with EU state aid law. This was adopted on 17 December 2020 in the German Bundestag.

The corresponding provision is subject to the EU state aid reservation according to § 105 (5) EEG 2021 and we would like to urge you to examine this very critically. In particular, we refer to § 23b (2) EEG 2021 in combination with § 21 (1) No.3 a and § 25(2) No. 2 and 3.

This provision regulates the follow-up support for onshore wind turbines whose original financial support entitlement under the EEG ends on 31 December 2020 or 31 December 2021. According to the new provision, these plants which have already received 20 years of support under the EEG could obtain a regulated top-up from the grid operator, in contrast to the other plants whose production is directly sold on the electricity market by a direct marketer. This additional payment flows into the EEG account and is compensated retroactively via the EEG levy.

By opening the possibility for electricity producers from de-subsidised plants to opt for the regulated top-up paid by the grid operator, there is a risk of considerable additional costs and a reversion to a state marketing model, which has been

abandoned in Germany since the EEG 2012. Plant operators who had sought a direct marketer themselves will now have a strong incentive to opt out of this model again and choose the route of receiving a top-up via the grid operator. The market integration of renewable energies will thus be reversed.

This is justified by the fact that a pure market valuation for some of the onshore wind turbines that have been subsidised is not sufficient to ensure economic operation. However, no differentiation is made as to whether economic operation can also be ensured with the existing market prices. All plant operators who fall out of subsidy can take advantage of the scheme and receive an undifferentiated, fixed additional income. In practice, this will likely lead to the termination of contracts already concluded with operators of plants that have been removed from subsidy schemes, in order to benefit from the even higher state subsidy. This creates a real incentive for plant operators to switch from direct marketing to marketing by grid operators.

In our view, this violates EU state aid law in several respects.

1. Necessity of the provision

According to the State Aid Guidelines for Energy and Environmental Protection, which will continue to apply in 2021, state aid should be limited to what is actually necessary. In particular, established renewable energies - such as wind energy - are expected to be competitive between 2020 and 2030 and should gradually be excluded from subsidy schemes. In addition, subsidies for renewable energies should contribute to the market integration of renewable energies.

The amendment to § 21(1) No. 3 of the EEG 2021 is intended to implement a two-year follow-up subsidy for onshore wind turbines currently supported via a feed-in tariff. The reason for this limited follow-up support is the Corona-related development of electricity prices. Onshore wind turbines whose original payment entitlement ends on 31 December 2020 after 20 years of EEG support will now receive an additional top-up from the grid operator. The government argues that a follow-up subsidy is necessary because of the lower electricity prices in the course of Covid19. However, spot market prices have already recovered and reached pre-Covid19 levels.

EFET member companies already offer flexible contractual framework conditions for plant operators to bridge short-term low-price situations and to secure them for the long term when spot market prices fluctuate. Of course, this cannot guarantee the complete elimination of price risks. Nevertheless, post-EEG plants should be able to bridge short-term reductions on the revenue side. This is also part of normal economic management and an essential component of successful market integration of renewable plants. Furthermore, we do not understand the purpose of implementing a "grace period" for the feed-in tariff instead of a subsidised direct marketing via a feed-in premium - the marketing model in which new plants have been operating since 2012.

From an environmental and climate policy, but also from an economic point of view, it makes a lot of sense to keep functioning plants connected to the grid. However, it is also true that the plants and their operation have already been paid for to a very substantial extent by German electricity customers. Here we find a contradiction with

paragraph 129 of the EU State Aid Guidelines, according to which aid is only granted until the plant has been fully depreciated according to the usual accounting standards. Surprisingly, the same electricity customers - precisely those affected by Covid-19 - should now also bear the follow-up subsidies for the plants that have already been fully financed and supported for 20 years. In our view, both the operators of the affected plants and the other affected parties had sufficient time to prepare for the end of financial support.

2. Appropriateness of the provision

We cannot see what advantage for the market, the EEG account and the operator the interim switch to the grid operator is supposed to bring. The grid operators would receive electricity that they could neither price in line with the market nor remunerate in line with the market. In addition, we see the danger that their pricing forecast would not be as effective as that of direct marketers and thus they will be unable to manage the plants either in line with demand or in a way that serves the grid. The provision is incompatible with the regulatory long-term goal of advancing the market integration of renewable energies and would bring about a similar situation that already existed before the introduction of direct marketing. Marketing of electricity generation from these post-EEG plants should clearly be left to competing market participants. The clear definition of market roles and the unbundling principle prescribed in the 3rd EU internal market package must not be diluted by such a regulation.

According to point 124 of the EU State Aid Guidelines, the aim of financial support mechanisms is also to create an incentive for the integration of electricity from renewable energy sources into the market, and for aid recipients to sell their electricity directly on the market and be subject to market obligations.

This does not fit with the fact that with the new regulation, the marketing of the plants will take place via balancing groups of the not fully unbundled grid operators. Already today, considerable amounts of renewable electricity are successfully integrated into the electricity market and align their wind and PV feed-in with the market price signal. In Germany, 95% of installed wind capacity and 25% of installed PV capacity are already in the market premium model. The market reference price guides short-term generation and consumption decisions as well as long-term investments in new generation capacities. In particular, the shortening of lead times towards trading until shortly before delivery time, as well as products with finer granularity such as 15 minutes enable direct marketers to manage generation ramps on a quarter-hourly basis, to fine-tune customer portfolios and to correct forecast deviations on an hourly basis. This successful market integration should be continued.

In view of the expiry of the EEG subsidy after 20 years, many EFET member companies have set out to develop new, innovative and digital business models around the marketing of green electricity after the subsidy period. The follow-up subsidy now proposed nullifies these efforts and prevents the market-economy integration of the plants. Even if the grid operators top-up is only to apply for one year, plant operators will thus switch from market-based direct marketing to a state-regulated regime and will be marketed by the grid operator. This situation would be a clear violation of competition between TSOs and market participants in the marketing of renewable energies.

Our member companies also complain that Power Purchase Agreement (PPA) negotiations that were already at an advanced stage have been broken off or interrupted due to the legal uncertainties that have now arisen. At this point we would also like to point out that EFET has also developed an EFET standard contract for PPAs from renewable energies; this has proven its worth and is used in the market, also throughout Europe.

For EFET, the expiry of the feed-in tariff subsidy is therefore not only a question of reliability, but also that the market and system integration of renewable energies is desired by politicians. A follow-up subsidy for EEG plants that leave the current subsidy clearly stands in the way of innovation- and competition-friendly market development.

If you have any questions about our arguments, please feel free to contact us at any time.

Yours sincerely, and best wishes for the coming Christmas and New Year

A handwritten signature in blue ink, appearing to read 'Barbara Lempp'.

Barbara Lempp
CEO EFET Deutschland