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COMMISSION RECOMMENDATION

of 13.5.2024

on auction design for renewable energy

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 292 thereof,

Whereas:

- (1) Renewable energy is pivotal in meeting the Union's decarbonisation objectives and delivering clean, affordable and secure electricity to households, businesses and industry and increasingly transport sector.
- (2) Energy production and consumption is responsible for over 75% of the total greenhouse gas emissions in the Union. Speeding up the deployment of renewable energy installations is therefore vital to reach the Union' renewable energy target of at least 42.5% by 2030 and to contribute to reaching the 2030 Union target of at least 55% greenhouse gas emission reductions in accordance with Regulation (EU) 2021/1119 of the European Parliament and of the Council¹.
- (3) Renewable energy is rapidly expanding. In 2022, the Union had 16 GW of offshore wind power capacity, 187 GW of onshore wind power and 203 GW of solar photovoltaic generation capacity². Furthermore, electricity generated from wind and solar represented 16% and 7% of the electricity mix, respectively, leading to a total of 23%.³
- (4) That expansion in the share of energy from renewable energy sources has been significantly facilitated by auctions organised by Member States. These auctions may involve State Aid. They can allocate public support for the construction of renewable projects or the rights to develop a project to a developer in a specific location, or both. Those auctions have allowed Member States to determine the level of financial support for renewable energy technologies in a competitive manner. Auctions have been instrumental in optimising the level of public support. Even though market-based deployment of renewable energy is on the rise, it continues to be mostly based on support schemes.
- (5) Pursuant to Article 4 (2) of Directive (EU) 2018/2001⁴, support schemes for electricity from renewable sources are to provide incentives for the integration of electricity from

¹ Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law') (OJ L 243, 9.7.2021, p. 1, ELI: <http://data.europa.eu/eli/reg/2021/1119/oj>.)

² Eurostat, Electricity production capacities for renewables and wastes.

³ Fraunhofer based on ENTSO-E Transparency Platform data.

⁴ Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources as amended by Directive (EU) 2023/2413 (OJ L 328, 21.12.2018, p. 82, ELI: <http://data.europa.eu/eli/dir/2018/2001/oj>).

renewable sources in the electricity market in a market-based and market-responsive way, while avoiding unnecessary distortions of electricity markets as well as taking into account possible system integration costs and grid stability. Pursuant to Article 4 (6) of Directive (EU) 2018/2001 whenever support for electricity from renewable sources is granted by means of a tendering procedure, Member States, in order to ensure a high project realisation rate, are to establish and publish non-discriminatory and transparent criteria to qualify for the tendering procedure. It is therefore particularly important that such auctions are properly designed.

- (6) Pursuant to Article 6 (3) of Directive (EU) 2018/2001 Member States are to publish a long-term schedule anticipating the expected allocation of support, covering, as a reference, at least the following five years, or, in the case of budgetary planning constraints, the following three years, including the indicative timing, the frequency of tendering procedures where appropriate, the expected capacity and budget or maximum unitary support expected to be allocated, and the expected eligible technologies, if applicable. That schedule is to be updated on an annual basis or, where necessary, to reflect recent market developments or expected allocation of support. That is particularly relevant to provide transparency and certainty in the market and facilitate the necessary investments to meet the deployment needs. Publication of this information in a dedicated Union interactive platform on auctions would serve these objectives as well as increase harmonisation.
- (7) National auctions for the development of renewable energy often do not appropriately reward the high environmental and social standards of Union products or consider the need for supply chain resilience or for energy system integration, as many auctions are based solely or mostly on price, though some Member States have started to introduce non-price criteria. Auction design options differ strongly across Member States, which increases transactions costs for economic operators. Some of those design options may also make project delays or the non-realisation of the projects more likely. Further harmonisation of Member States' auction design principles could reduce transaction costs and help ensure that auctions are fit for purpose thanks to building on experience and good practice, while enabling sufficient scope for flexibility and innovation. With the support of the Commission, the existing structured dialogue fora⁵ related to renewable energy can be used to exchange best practices and harmonise auction design when appropriate. The Union legislation on the electricity market design aims to harmonise the design of direct price support schemes in the form of two-way contracts for difference⁶.
- (8) The Commission adopted a Communication on the European Wind Power Action Plan (the 'WPAP') on 24 October 2023⁷. Its Action 4 calls on Member States to include in their auctions objective, transparent and non-discriminatory qualitative criteria and measures in order to maximise the execution rate of the projects with a view to bringing quick and tangible improvements and more harmonisation to the design of

⁵ These include the Concerted Action CA-RES or the regional High-level Groups such as North Sea Energy Cooperation (NSEC), Interconnections for South-West Europe, Baltic Energy Market Interconnection Plan (BEMIP) or the Central and South Eastern Europe Energy Connectivity (CESEC).

⁶ The text of the provisional agreement between the European Parliament and the Council is available here <https://www.consilium.europa.eu/en/press/press-releases/2023/12/14/reform-of-electricity-market-design-council-and-parliament-reach-deal/>

⁷ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: European Wind Power Action Plan, COM(2023) 669 final, Brussels, 24.10.2023.

renewable energy auctions. This Recommendation aims to support Member States regarding the design of their auction design principles, in full complementarity with Union legislation on establishing a framework of measures for strengthening Europe's net-zero technology manufacturing ecosystem⁸. This Recommendation is without prejudice to Union law, in particular in the area of energy, environment and cybersecurity, and to the obligations arising out of it. It is also without prejudice to the Union rules on competition, in particular Articles 107 and 108 of the Treaty on the Functioning of the European Union, and the Commission's decisional practice in the enforcement of the Union State aid rules.

- (9) Auction design should guarantee a competitive bidding process, and it is to be based on objective, transparent and non-discriminatory criteria, ensuring legal certainty in line with Union law and the Union's international commitments.
- (10) Non-price criteria in auctions are a tool to pursue additional objectives next to the sourcing of electricity at the lowest costs. Non-price criteria can be implemented as pre-qualification criteria or as award criteria, or both. They should be designed and evaluated in a non-discriminatory, objective and transparent manner.
- (11) Auction rules need to be designed to ensure full completion of the projects in a timely manner. Addressing the risk of project delays or non-execution increases predictability and certainty for investors. This can be done through measures such as penalty clauses for bidders in case of delays or lack of completion of the project or price indexation to help industry to better cope with cost increases due to inflation after the award of the auction.
- (12) Whenever auctions for renewable energy allow for negative bidding, a properly designed competitive process should reflect the willingness to pay of each bidder for the project, therefore reflecting its market value.
- (13) Bid ceilings are a budgetary insurance for the Member State to limit deployment costs, but if they are not properly set, they may lead to auctions being undersubscribed and may hamper the renewable deployment or lead to overcompensation.
- (14) Pursuant to Article 22 (7) of Directive (EU) 2018/2001 Member States are to consider specificities of renewable energy communities when designing support schemes in order to allow them to compete for support on an equal footing with other market participants. Moreover, the Guidelines on State aid for climate, environmental protection and energy⁹, as well as the General Block Exemption Regulation¹⁰ and the Temporary Crisis and Transition Framework¹¹, allow Member States to apply certain flexibilities for 100% small and medium enterprises ('SMEs') owned projects or renewable energy community projects below certain capacity thresholds.

⁸ The compromise final text in view to an agreement is available here [https://www.consilium.europa.eu/en/press/press-releases/2024/02/06/net-zero-industry-act-council-and-parliament-strike-a-deal-to-boost-eu-s-green-industry/#:~:text=The%20Council%20and%20the%20European,industry%20act%20\(NZIA\).](https://www.consilium.europa.eu/en/press/press-releases/2024/02/06/net-zero-industry-act-council-and-parliament-strike-a-deal-to-boost-eu-s-green-industry/#:~:text=The%20Council%20and%20the%20European,industry%20act%20(NZIA).)

⁹ Communication from the Commission – Guidelines on State aid for climate, environmental protection and energy 2022, (OJ C 80, 18.2.2022, p. 1)

¹⁰ Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty

¹¹ Communication from the Commission Temporary Crisis and Transition Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia (OJ C 101/3, 17.3.2023, p.3)

HAS ADOPTED THIS RECOMMENDATION:

DEFINITIONS

- (1) For the purposes of this Recommendation auctions are defined as a market mechanism which aims to allocate goods in case of excess supply and price discovery for goods with unknown market prices from an auctioneer's perspective. The allocation is based solely on the bids submitted by the participating bidders according to transparent awarding rules. For the purposes of this Recommendation, the terms auction and tender are used interchangeably.

GENERAL CONSIDERATION APPLICABLE TO AUCTION DESIGN

- (2) Member States should ensure that their auction design contributes to the rapid, efficient and sustainable deployment of renewable energy in a competitive manner, attracts private investments and provides benefits such as investment certainty for the sector.
- (3) Member States should ensure that the auction design increases the chances of a successful auction result by reflecting the market situation. This includes involving market participants and experts early and constantly during the auction design process and aligning the complexity of the auction design with market maturity.
- (4) Member States, with the support of the Commission, should use the established structured dialogue fora related to renewable energy to seek harmonisation in auction design for auctions for the same renewable energy technology that pursue similar objectives, in order to reduce transaction costs for project development and Member States. They should consider harmonisation in particular in auctions for renewable energy technologies sharing the same geographic location, such as same seabed and when introducing non-price criteria. Member States should cooperate to limit divergences in auction design and methodologies used to measure non-price criteria, while maintaining flexibility when necessary.
- (5) In order to increase transparency and certainty to the market actors across the Union and facilitate the necessary investments to meet their deployment needs, Member States should publish information on their auction schedule in the dedicated Union interactive platform set up by the Commission.

NON-PRICE CRITERIA AND THEIR USE AS PRE-QUALIFICATION AND AWARD CRITERIA

- (6) Member States should make use of non-price criteria in auctions as pre-qualification or award criteria, or both, in order to pursue objectives that cannot be captured by the price only dimension, such as quality, ability to deliver the project on time, responsible business conduct, cyber-security and data security, contribution to resilience, environmental sustainability or innovation. When deciding whether to introduce non-price criteria as pre-qualification or award criteria in their auctions, Member States should avoid negative impacts on the competitiveness of the bidding process, in particular for smaller renewable projects, and define and evaluate the criteria in an objective, transparent, non-discriminatory manner and not leading to a disproportionate increase in costs.

- (7) Member States should use non-price criteria as pre-qualification criteria when they establish a minimum threshold of the pursued objective that all bidders in the auction must meet. Member States should use them as award criteria when they want to incentivise a better achievement of a given objective such as higher quality, energy system integration or providing innovative solutions for a given level of support and should be designed to enable ranking the eligible projects. Non-price award criteria which are too general or too broad should be avoided.
- (8) Member States should, when using non-price criteria to pursue different objectives, ensure coherence among them. Non-price criteria should be defined taking into account the way in which each technology can contribute to the policy objective. Non-price criteria should not purely duplicate the existing concrete requirements in the applicable Union or national legislation. In some cases, criteria specifying existing general legal provision with regard to the concrete tender can be justified. The inclusion of non-price criteria should result in a net contribution to the policy objective relative to what is already required under existing legislation. For some non-price criteria used as pre-qualification criteria, such as responsible business conduct and cybersecurity and data security, requiring compliance with the applicable legislation may be appropriate.
- (9) Member States should define a transparent, objective and non-discriminatory methodology to assess bids against the selected non-price criteria, in particular through a quantitative assessment of the criteria based on a scoring method set up and published in advance of the bidding process.
- (10) Member States using non-price criteria should put in place mechanisms to ensure they are complied with. Appropriate penalties should be put in place to identify and act on non-compliance. These penalties should be sufficiently high to deter bidding strategies pursuing the non-respect of non-price criteria which are only verified ex-post.
- (11) Member States should ensure the availability of administrative resources needed for effective and efficient verification of compliance with non-price pre-qualification and award criteria.

USE OF PARTICULAR NON-PRICE CRITERIA

- (12) Member States should include in their auctions as soon as possible non-price criteria, either pre-qualification or award, pertaining to the contribution to a resilient supply chain, in accordance with Union legislation on establishing a framework of measures for strengthening Europe's net-zero technology manufacturing ecosystem to avoid overdependence on a single source of supply while preserving the competitiveness of the auctions.
- (13) Member States using environmental and sustainability criteria in their auctions should use them as pre-qualification, award criteria or a combination of both, depending on the policy objectives they wish to pursue. Those policy objectives could include environmental protection and restoration of the ecosystem or aspects related to the recyclability of the products used and more generally product life circularity.
- (14) Member States seeking to foster innovation through the use of non-price criteria should rather use them as award criteria. In cases where the innovation criteria seek to improve performance or efficiency, for instance from a sustainability point of

view, the parameters should be defined in a quantitative manner. If Member States pursue disruptive innovation, they should endeavour to apply quantitative parameters. Under exceptional circumstances, when no quantitative parameters can be applied, a qualitative assessment based on extensive consultation and collaboration with stakeholders and experts in the auction design process may be used. In any case, Member States should provide sufficient visibility on how the scoring will be carried out ahead of the auction.

- (15) Member States seeking to foster energy system integration through the use of non-price criteria, for instance by rewarding participation to ancillary/balancing services or contribution to grid congestion reduction, should do it through pre-qualification or award criteria, or a combination of both.
- (16) Member States seeking to foster cybersecurity and data security through the use of non-price criteria should primarily use them as pre-qualification criteria. They should contribute to the objectives pursued by Directive (EU) 2022/2555¹² of the European Parliament and of the Council of achieving a high common level of cybersecurity in the Union and should be designed by considering the relevant cybersecurity risks and their origins. The criteria could include the security-by-design of the digital networks in the wind installations; measures to mitigate cybersecurity risks in the supply chain and control on the data being stored and processed. Whenever available and appropriate, European cybersecurity certification schemes adopted pursuant to Regulation (EU) 2019/881 of the European Parliament and of the Council¹³ should be promoted during the deployment and operation of the installations.
- (17) Member States using criteria related to responsible business conduct, including the respect of human rights and environmental due diligence practices of the value chain should include them as pre-qualification criteria. Member States should require the application of national responsible business conduct code, or, in the future, when available, a European responsible business conduct code, unless existing legislation already requires compliance to these or to equivalent criteria.
- (18) Member States should include, when necessary, non-price criteria related to benefits for local communities, such as promoting citizen participation in the projects including via renewable energy communities and citizen energy communities.

MEASURES TO INCENTIVISE THE FULL COMPLETION OF PROJECTS IN A TIMELY MANNER

- (19) Member States should put in place measures to ensure full project completion in a timely manner, such as penalties for non-completion or delayed commissioning on the basis of a detailed assessment. Penalties should be set at a level that balances the need to ensure a competitive bidding process while dissuading companies to bid without a firm intention of realising the project and respecting the project specifications (including the pre-qualification criteria).

¹² Directive (EU) 2022/2555 of the European Parliament and of the Council of 14 December 2022 on measures for a high common level of cybersecurity across the Union, amending Regulation (EU) No 910/2014 and Directive (EU) 2018/1972, and repealing Directive (EU) 2016/1148 (NIS 2 Directive) (OJ L 333, 27.12.2022, p. 80)

¹³ Regulation (EU) 2019/881 of the European Parliament and of the Council of 17 April 2019 on ENISA (the European Union Agency for Cybersecurity) and on information and communications technology cybersecurity certification and repealing Regulation (EU) No 526/2013 (Cybersecurity Act) (OJ L 151, 7.6.2019, p. 15).

- (20) For offshore wind auctions, Member States should, as a general rule, auction sites which have been soundly pre-investigated to limit project risks and increase the likelihood that the project is deployed fully and timely. In such cases, Member States should set stricter penalties for non-completion compared to non pre-investigated offshore wind sites, to increase the probability of completing the project.
- (21) Member States should consider including indexation clauses in the auction design, in particular for situations where hedging by companies is not possible or too costly, to ensure full and timely completion of projects, while balancing the risk sharing between the project developer and the auctioneer and taking into account the availability of different de-risking options. For auctions where State aid in the form of direct price support is provided, Member States should consider including indexation clauses for the construction phase of the project. When such indexation clauses are used, the impact on public finances should be duly assessed and taken into account in the overall budgetary envelope dedicated to such support schemes.
- (22) For auctions which do not provide State aid in the form of direct price support, but raise money because of a negative bidding component, Member States should request the payment in instalments over a certain period of time to hedge for inflation by design and limit the developer's financial risks.

NEGATIVE BIDDING

- (23) Member States organising auctions where negative bidding is a possibility should ensure that the auction is designed so that bids reflect the market value of the project and maximize the likelihood of the project materialising.
- (24) Member States should progressively combine the negative bidding with non-price criteria which allow to pursue multiple policy objectives contributing to the European Green Deal,¹⁴ including the Green Deal Industrial Plan¹⁵ and the REPowerEU plan¹⁶.
- (25) All or the bulk of the revenues from auctions based on negative bidding should be earmarked to support the development of renewable energy generation, including through grid reinforcement or expansion, or non-fossil flexibility.

BID CEILINGS

- (26) When Member States decide to include bid ceilings in auctions that provide State aid, they should set these bid ceilings to reflect the amount of support they are willing to pay for the project, considering among other things the different levelized cost of electricity of an individual project in order to prevent undersubscription of the auction. To this effect, Member States should determine the volume of electricity auctioned at a level that preserves the competitive bidding process.

¹⁴ Communication from the Commission COM(2019/640) final, The European Green Deal.

¹⁵ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: A Green Deal Industrial Plan for the Net-Zero Age, COM (2023) 62 final, Brussels 1.2.2023

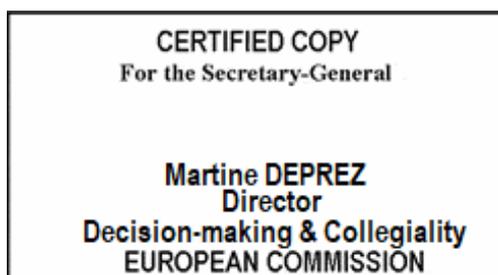
¹⁶ Communication from the Commission COM(2022) 230 final REPowerEU Plan.

LEVELLING THE PLAYING FIELD FOR RENEWABLE ENERGY COMMUNITIES AND SMES

- (27) Where Member States decide to use auctions to allocate aid to projects developed by renewable energy communities or SMEs¹⁷, they should for example consider granting them more flexibility on an objective basis regarding pre-qualification requirements and may consider separate adapted auction envelopes for this type of projects. When applicable, the possibility for a renewable energy community to be open to cross-border participation should be taken into account when designing auctions.

Done at Brussels, 13.5.2024

For the Commission
Kadri SIMSON
Member of the Commission



¹⁷ As defined in the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (2003/361/EC)