

EU Environmental State Aid Policy

Wide Implications, Narrow Participation?

a CANES Working Paper

Karoline Flåm



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Abstract

This article investigates the 2008 reform of the EU's environmental state aid guidelines, with an eye to determining the degree of external pressure and lobbyism towards environmental state aid policies. What is found is a strikingly low level of external pressure on the policy-field, not least on the part of the private sector. In fact, EU environmental state aid policy is largely the making of a few Commission officials, without much external 'interference'. The article discusses possible reasons for this, and asks whether state aid policy-making might be marked less by clear and established interests and utility maximising, and more by actors constrained by complexity and bounded rationality.

Key Words

Environment, EU, lobbyism, renewable energy, state aid

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CANES (Climate change Altering Nordic Energy Systems) is a Norwegian-Swedish research project in which Nordic research institutions cooperate with some of the most prominent players in the energy sector to find answers to the following question:

How are the Nordic energy markets and infrastructure affected by existing and future climate policies on EU and national levels?

The Fridtjof Nansen Institute (FNI) is the co-ordinator of this 2007-2010 project. The research tasks are conducted by FNI in collaboration with the Stockholm Environment Institute (SEI) and Lund Institute of Technology. Energibedriftenes Landsforening (the Norwegian Electricity Industry Association), Norsk Industri (the Federation of Norwegian Industries), Statnett, Statkraft, Svenska Kraftnät and Vattenfall are industrial partners in the project.

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Abbreviations

DG	Directorate-General
EEA	European Economic Area
EFTA	European Free Trade Association
EU	European Union
NGO	Non-governmental organization

1 Introduction

EU environmental state aid policies have important and sometimes contentious implications. They regulate in detail how much an EU Member State can give in terms of environmental subsidies, as well as to what projects and on what conditions such subsidies can be provided (McGowan 2000: 129-30; see also Vedder 2003: 301-18). In practice, they can determine which type of domestic environmental policies can be implemented, and which cannot; they can determine which types of energy technologies should be subsidised, and which should not.

Hence, it is reasonable to assume that this policy-field is subject much external pressure and lobbyism. In general, interest groups and lobbyists are an increasingly important feature of EU policy-making (Coen 2007), and this article asks whether this is the case also in the environmental state aid policy-field. Who are the key drivers of EU environmental state aid policies? To what extent, and through which political channels, does the broader field of state aid stakeholders, i.e. the national governments and private firms, actively engage in and influence on this policy-field?

The article's empirical backdrop is the recent reform of the EU's *Guidelines for state aid for environmental protection* (hereafter 'the state aid guidelines') (European Commission 2008a). These guidelines set the specific rules and regulations regarding environmental state aid in the EU Member States and the European Free Trade Association (EFTA) countries.¹ The guidelines are revised every six or seven years, and new guidelines were published on 1 April 2008, following a reform process of roughly two years.

The state aid guidelines contain provisions on a wide series of issues², and this article cannot cover all of them. Instead we will focus on the provisions relating to state aid for renewable energy, cogeneration (the combined production of electricity and heat) and district heating (heat distribution from a centralized location to multiple recipients), since these provisions hold relevance for a broad field of stakeholders, and since the changes which have come about on these issues are quite significant. The new state aid guidelines allow state funds to cover as much as 100 percent of the extra investment costs entailed in a renewable energy project, a cogeneration- or a district heating installation (European Commission 2008a: 19-21). This is a considerable 'upgrading' from the previous guidelines. These set the aid limit at only 40-60 percent on renewable energy and cogeneration, and they did not even mention aid for district heating (European Commission 2001). In short, then, the new state aid guidelines have been rendered both *broader* and more *generous* – they leave Member States with a freer hand to subsidise 'green' energy production.

What explanatory factors lie behind these changes? Do they perhaps reflect a successful lobbying campaign towards the state aid decision-makers on the part of renewable energy firms or renewable energy interest groups?

This article discusses three possible scenarios as to who the key drivers behind the new state aid policy may be. First, it is assumed that the changes stem from the will of the European Commission itself. This can be viewed as a kind of ‘baseline expectation’, considering that formally speaking, it is the Commission which has the hand on the steering wheel in EU state aid policies. The Commission has been given wide competencies to both develop and decide on state aid policies (McGowan 2000). This presumption is then challenged by two other scenarios: an industry/NGO (non-governmental organization) approach suggesting that the reform’s outcome was the result of direct lobbying on the part of renewable energy producers, interest groups and the environmental lobby, which all share the interests in green subsidies being increased; and finally a Member State approach suggesting that the reform’s outcome was the result not primarily of private stakeholder lobbying, but rather it was the work of national governments, demanding increased leeway with regards to their domestic economic policies. All in all, then, we scrutinize the reform of the state aid guidelines with an eye to determine whether the Commission, the energy sector and NGO lobbyists, or the national governments are the key state aid policy-makers.

A brief note on the study’s empirical basis: the analysis rests on the complete collection of consultation documents given to the Commission from various stakeholders throughout the reform process. In addition to these written inputs, there have been multilateral meetings between the Commission and Member State representatives on the reform of the guidelines. However, from these meetings, the Commission holds no written minutes. To make up for this shortcoming and to supplement the written data with ‘first-hand information’, a total of 23 interviews have been conducted, both with actors which were directly involved in the reform process, and with actors holding a broader knowledge on the various aspects of EU state aid policies and the environmental state aid guidelines. Due to the sensitivity of some of the issues discussed, the interviewees are treated anonymously throughout the article, but an overview of their names and designations can be found in the article’s appendix.

The article proceeds as follows: section 2 presents the article’s analytical framework, explaining in more detail the three explanatory approaches which will guide our investigation of the environmental state aid reform process. Section 3 maps out the key differences between the previous and the new state aid guidelines with regard to aid for renewable energy, cogeneration and district heating. Subsequently, section 4 provides a chronological review of the actual reform process. Section 5 gives an assessment of the various stakeholders’ actual engagement in the process, and we discuss the findings’ implications with regards to the explanatory approaches and our analytical framework as such. Finally, section 6 rounds off by summarizing the article’s main findings.

2 What Determines EU State Aid Policy-making?

How can we best understand the changes made with regards to renewable energy, cogeneration and district heating in the EU's new environmental state aid guidelines? This article addresses the question using three different explanatory approaches. These are presented in more detail in the following.

2.1 A First Approach: Commission Control?

The decision-making process resulting in the state aid guidelines is quite distinctive from most other policy-processes in the EU. In fact, there are few areas where the Commission is more central or more autonomous than in competition- and state aid policy-making (McGowan 2000). This is due both to the policy-field's strong Treaty basis, and to a series of Council regulations which have increased the Commission's role in both developing and enforcing state aid policies (Ibid.: 116). The rationale for this delegation of power has been the notion that in state aid matters, a strong Commission is necessary in order to uphold a 'liberal internal market' and to safeguard the Community against national, protectionist economic policies.

As a result, the Parliament and the Council of Ministers have no formal roles in the making and shaping of state aid guidelines. They are invited to consultations along with relevant stakeholders, but the Commission does not have to embark on the same sort of negotiations as it does in most other political processes (Ibid.: 123). As for the European Court of Justice, this institution can of course play an important role both in overseeing the Commission's powers, and in serving as the court of appeal in concrete state aid cases. However, in practice the Court has contributed to the broadening of the Commission's powers, supporting the Commission's decisions in most state aid cases (Ibid.: 115, 123).³

All in all, then, it seems reasonable to assume that the sources for the changes in the new environmental guidelines are to be found within the Commission itself. The increased aid levels for renewable energy, cogeneration and district heating must be the product of the Commission's own preferences. Of course, the Commission is hardly a unit in complete harmony on these matters. The Competition Directorate-General (DG), which has the formal responsibility for state aid matters, will for instance be much more prone to uphold its 'ethos' of competition and economic liberalism (Ibid.: 122), and consequently work for a minimising of subsidies of any kind; whereas the DG Energy and Transport and DG Environment, which certainly also are relevant actors when it comes to the issue of environmental state aid, will be more likely to emphasise the need for increased subsidies for green energy, in line with the interests of the sectors they represent. Perhaps the increased focus on renewable energy, cogeneration and district heating in the EU's new environmental state aid policy is simply a result of the DG Energy and DG Environment being particularly salient and successful in getting through with their preferences during the reform process?

2.2 Alternative Approaches: Industry and Member State Influence

The above description of EU state aid policy can be challenged on the terms that it paints a too ‘formalistic picture’ of EU state aid policy-making. Even if the Commission on paper has a strong hold on state aid matters, certainly the policy-field cannot be immune to external pressures. After all, what is included and not included in the state aid guidelines can turn out to be crucial for both national governments and private firms – it can turn out to be the difference between millions and millions in subsidies, and no subsidies at all. Surely then, the Commission must be subject to stakeholder pressures – not least in the context of a state aid reform.

Yet another reason to question the impression of an all-Commission controlled policy-area, is that the Commission during the recent years increasingly has taken a more ‘open line’ in the making of state aid policies, welcoming lobbying and actively seeking the opinions of the state aid stakeholders (McGowan 2000: 124). According to Cini (2001), state aid is in fact among the most politicized of the EU’s regulatory policies (Ibid.: 198).

On this basis we postulate two alternatives to the initial Commission expectation. For one, we will review the reform of the state aid guidelines with a particular eye on the role of the private sector, and more specifically the role of energy firms and interest groups. We will scrutinize whether the reform’s beneficial outcome for renewable energy and heating can be traced back to a successful lobbying campaign on the part of these actors. Within this perspective, it is natural to consider also the potential role of the environmental lobby. Even though this is not a direct beneficiary from increased subsidies like the energy producers themselves, it seems plausible that it has taken an active part in trying to influence the outcome of the state aid reform, considering its generally strong engagement for increased use of renewable energy.

The assumption within this industry/NGO approach is that the private sector stakeholders worked actively and *directly* towards the Commission in order to influence the new state aid guidelines. This is in line with the so-called ‘multi-level governance’ perspective on EU policy-making, according to which EU policy-making is increasingly non-hierarchical, mobilizing networks of both private and public actors who engage in a deliberative problem-solving process (Hooghe and Marks 2001; Pollack 2005). States and institutions no longer monopolise EU policy-making – rather, there is a large number of interest groups and lobbyists working directly towards Brussels, engaging in policy-processes as political actors in their own right (Coen 2007).

Of course, it might also be that the private sector stakeholders choose a different pathway for their lobbyism, working primarily domestically towards the national governments and leaving it up to the Member State delegates to make sure that their interests are taken care of. Such a scenario is incorporated in our last explanatory approach, which entails a much stricter division between the domestic and the European political

realm. The *Member State approach* leans on intergovernmentalist theory, which upholds that the preferences of the Member States are the key determinants of European politics (Moravcsik 1991, 1998, 1999; Moravcsik and Nicolaïdis 1999). In the case of environmental state aid, we can assume that Member States in general have a preference for increased leeway with regards to their domestic economic and environmental policies. The Member States have political goals they want to obtain, constituencies and domestic industries they would like to please – both of which will surely be easier if they have secured the possibility to provide the kind of subsidies they would like to.

Thus, we will assume that the increased aid levels in the EU's new environmental state aid guidelines are a result of national government pressure towards the Commission. On the specific issue of district heating, it seems plausible that this might be ascribed to the new Eastern European Member States, in which the district heating sector is relatively big (International Energy Agency 2002). Considering the poor shape of many of their district heating installations (Ibid.), state aid for district heating should intuitively be of particular interest for these countries.

In sum, then, our analytical framework stands on three pillars: a Commission pillar, assuming that the outcome of the environmental guidelines reform reflects the 'inner will' of a strong and autonomous Commission; an industry pillar, assuming that the outcome reflects the direct and successful lobbying of relevant industry/NGO stakeholders; and finally a Member State pillar, assuming that the reform's outcome was a result of the Member States pushing through their interests for increased economic leeway with regard to subsidising domestic renewable energy sectors.

The three explanatory approaches vary in that they highlight different actors and somewhat different 'channels' of political agency. However, it should be noted that our three approaches are all founded on a common and important premise – the premise that the actors involved in state aid policy-making in some way or another act on the basis of clearly defined *interests*. They are utility maximising actors, engaging in policy-processes with the aim of achieving a specific outcome. As such, our three explanatory approaches all have a certain footing in the rational actor-perspective on policy-making (see Elster 1989; Underdal 1984): the actors involved in the policy-process have clear and established preferences, and they work to achieve what they see as the best outcome for themselves. This is the premise and the basic foundation for the whole of the analytical framework applied in this study. Towards the end of the article, when we set out to review and evaluate our three explanatory approaches, we will revisit also this underlying premise, and ask whether our case at study is a 'good fit' with the core assumptions of the rational actor-perspective.

3. Changes in the EU's Environmental State Aid Policy

In this section, we scrutinize what the key changes are in the new environmental state aid guidelines with regard to renewable energy, cogeneration and district heating. Table 1 maps out the main differences between the previous guidelines which were put in place in 2001, and the new 2008 guidelines.

Table 1. Changes between the EU's 2001 and 2008 environmental state aid guidelines

Investment aid (% of eligible costs ^a)	2001 guidelines	2008 guidelines
Renewable energy	40-60 %	60-80 %, 100 % if bidding
Cogeneration	40-60 %	60-80 %, 100 % if bidding
District heating	----	50-70 % if conventional, 60-80 % if renewable, 100 % if bidding

a) Eligible costs are defined as 'the extra investment costs borne by the beneficiary compared with a conventional power plant or with a conventional heating system with the same capacity in terms of the effective production of energy' (European Commission 2008a: 19; see also Vedder 2003: 306).

As the reader might have noticed, we will focus on the state aid guidelines' provisions on *investment aid* in this article. We will not go into the provisions regarding the possibilities to provide operating aid, for two reasons: for one, the provisions regarding operating aid contain a series of calculation options and are in general too technical to go into in an article of this scope. More importantly, the reform changes with regard to operating aid are quite minor.⁴ Thus, we focus instead on the provisions regarding investment aid, where there are noticeable changes between the previous and the current state aid guidelines.

As we can see, the 2001 guidelines contained rules on state aid for renewable energy and cogeneration, but the issue of district heating was not addressed explicitly (European Commission 2001). Moreover, the aid levels in the 2001 guidelines were not overwhelmingly high: renewable energy and cogeneration would be eligible for state aid covering up to 40-60 percent of the eligible investment costs (Ibid.: 7).

In the new 2008 guidelines, however, noticeable changes have been made. For one, there has been a considerable ‘upgrading’ of the aid limits: the guidelines’ threshold for investment aid is now at 60-80 percent (European Commission 2008a: 19-20). In fact, the state can take the whole bill, covering as much as 100 percent of the extra costs, if the project at stake has been subject to a competitive bidding process (Ibid.). In other words, the aid levels have increased significantly. In addition to this, the new guidelines have expanded their scope and now also include, among other new features, specific rules for aid to district heating. 60-80 percent of the eligible investment costs entailed in a district heating installation can be covered by the state if the installation runs on a renewable energy source. If the installation runs on ‘conventional energy’, i.e. fossil energy, the state can cover 50-70 percent (Ibid.: 21). Also here, 100 percent of extra costs can be covered in cases of competitive bidding.

In sum, then, the new 2008 guidelines are much more generous than their predecessor – they increase the possibilities to provide state aid, both vertically (allowing higher aid levels) and horizontally (broadening the scope of the guidelines). So, who should be credited for bringing about these changes? What happened throughout the policy-making to produce the more generous state aid policy? This is the subject of our next section, which provides a chronological review of the reform process.

4 The Reform Process: An Overview

4.1 Initiating the Reform

The revision of the previous state aid guidelines began in the fall of 2005, when the DG Competition issued a broad questionnaire for public consultation, asking questions to both Member States and non-governmental stakeholders on what they saw as the main shortcomings of the 2001 guidelines. In line with the broader trend of establishing an 'open line' during the drafting of state aid policies (see section 2.2), the Commission prepared for a thorough discussion, both during this preliminary consultation round and also in the upcoming drafts of the new guidelines. Any third party was invited to provide inputs, and all information would be made publicly available on the DG Competition website.

Among the questions which were asked in the questionnaire, was whether the aid levels should be increased and whether any types of technologies or renewable energies should be prioritised in the new guidelines (European Commission 2005). The issue of district heating was not mentioned explicitly, but stakeholders were asked whether the scope of the guidelines should be expanded to include 'new areas' (Ibid.: 5).

The clearest message from the questionnaire consultation, both from Member States and industry groups, was that the aid levels needed to be increased (see for instance The Norwegian Government 2005; The Swedish delegation to the European Union 2005; The UK Government 2005; Iberdrola 2005). Other than this however, there were not many specific suggestions for change with regard to aid for renewable energy.⁵ As for the issue of expanding the scope of the guidelines there was not much response. Only Denmark briefly suggested that some types of heat production should be given more favourable rules (The Danish delegation to the European Union 2005: 2). District heating was not mentioned in any of the responses to the Commission. None of the new Member States stressed the issue, and heating companies or heating organisations did not even participate in this preliminary consultation round. Among the renewable energy organisations, only the broad umbrella organisation European Renewable Energy Council responded, with demands that the aid levels should be increased (EREC 2006).

Within the Commission, the stakeholders' request for increased aid levels was met largely with acceptance and agreement, not least from the DG Environment and DG Energy and Transport (Author's interviews). In addition however, these DGs also stressed the need for including specific state aid rules on the issue of district heating, even if such a change had not been requested by any of the stakeholders (Ibid.). Not least considering the new Eastern European Member States and their large but highly inefficient district heating installations, it was thought that the state aid guidelines should give 'clearer incentives to upgrade this sector' (Ibid.).

No doubt the Commission also had an eye to its climate policies and its increasing ambitions with regards to the use of renewable energy, which

at the time was incorporated not least in the drafting of a new renewable energy directive proposal (European Commission 2008c). This proposal was to include binding targets on the overall usage of renewable energy sources – including heating – in all Member States. Thus, it seemed only reasonable to make adjustments also in the environmental state aid guidelines: the new state aid policy would have to spur investments not only in renewable electricity but also in heating, and ultimately make it easier for the Member States to achieve their renewable energy targets.

4.2 The First draft

In May 2007, the year of the expiry of the 2001 guidelines, the DG Competition issued the first draft proposal of new environmental guidelines (European Commission 2007a). On the issue of renewable energy and cogeneration, the Commission suggested a ten percent increase in the investment aid levels, from the previous 40-60 percent up to 50-70 percent. In addition, the draft contained a specific and separate paragraph on aid for district heating, which was to get the same amount of aid as was suggested for the other two aid categories, provided that it was based on renewable energy sources (Ibid.: 29). Interestingly, also district heating using conventional energy sources, i.e. fossil fuels, would be eligible for state aid, but here the aid limit would be set ten percent lower, in other words at 40-60 percent (Ibid.).

It seems puzzling that this latter inclusion – the proposal of state aid for fossil-fuelled district heating – did not spur more attention in the consultation round which followed. Of course, one could argue that district heating can be more energy-efficient than individual heating systems, regardless of its energy sources, and that on this basis it can be justified to give environmental state aid for such installations. Most probably, there had been discussions and different viewpoints on this issue within the Commission, discussions on whether ‘brown’ energy sources should be condoned under the ‘green’ state aid guidelines. All the more surprising is the lack of engagement from the environmental lobby on the matter. With their long record of opposing fossil fuel subsidies, one certainly could have expected them to take an active stand on the issue also during the reform of the state aid guidelines. After all, the Commission’s proposal basically meant that one would be endorsing subsidies for coal-driven installations. However, the environmental groups did not seem to take notice of the Commission’s proposal; in fact, they gave no input at all throughout the state aid guidelines reform.⁶ The only ones who took a somewhat sceptical stand against the Commission’s proposal for state aid for fossil-fuelled district heating, was the Swedes. They argued that by allowing up to 60 percent state aid on such installations, one risked ‘conserving the present usage of fossil fuels’ (The Swedish government 2007: 13-14). Other than that, however, there were no questions or objections to the proposal for aid to fossil-fuelled district heating.

This picture of ‘passive’ stakeholders is in fact the general impression given by this first draft consultation round as such, at least when we look at the role of private firms and interest groups. True, there were parts of the heating industry which awakened when they saw that there were regulatory policies being developed with direct relevance for them. Cogen

Europe, the European association for the promotion of cogeneration, provided inputs with regards to which efficiency criteria should be applied to the district heating (Cogen Europe 2007), as did also the European association for heat and power industries, Euroheat & Power (Euroheat & Power 2007).⁷ The latter also asked the timely question of why only district heating, and not district cooling, had been included in the draft (Ibid.). Apart from these comments, however, the overall attention amongst firms and NGOs was quite limited. A long series of relevant renewable energy organisations did not even participate in the consultations.⁸ The same can be said for the key national district heating associations, such as the various Nordic District Heating Associations and their equivalents in central and Eastern Europe, and also business companies which are relatively big on heating, such as for instance Fortum and Vattenfall – they were all silent in relation to the reform of the EU environmental guidelines.

The Member States provided somewhat more input to the Commission's proposal. Among the more specific suggestions was the UK's proposal that all renewable energy projects should be eligible for 100 percent of the extra investment costs being covered by state aid, provided that the project resulted from a competitive bidding process (The UK Government 2007). Such bidding processes would minimise the aid needed and they would make redundant the 'arbitrary' aid limits proposed by the Commission, it was argued. Also many of the Eastern European Member States, such as Bulgaria, Hungary, Slovakia and Estonia, agreed that the aid levels should be increased further than what the Commission had proposed (see for instance The Estonian government 2007). Interestingly however, none of them had any specific inputs or demands on the issue of district heating – despite the fact that the Commission had included this issue particularly with the Eastern European Member States in mind. They made no effort to make sure that the rules and regulations on district heating were to their liking. In fact, they did not mention the issue at all.

4.3 The Second Draft

In its second draft of the new guidelines, which was issued in October 2007 (European Commission 2007b), the Commission once again took into account the pleas that had been made for higher aid levels. Instead of the 50-70 percent aid levels that had been proposed in the first draft, the maximum limits were now set at 60-80 percent. These numbers would apply for both renewable energy, cogeneration and for renewable district heating projects. As for the aid levels for fossil-fuelled district heating, these were also increased, up to 50-70 percent. Clearly, the solitary objections from the Swedes had not been enough to change the Commission's mind on this issue.

Compared to the first consultation round, there were even fewer stakeholder responses this time around. Some of the national governments, such as Austria, Portugal, Luxembourg and Malta didn't even send any formal responses to the Commission's drafts, not to the first and not to the second one. Others pretty much repeated previous suggestions – the Danish signalled their support for the UK proposal of allowing 100 percent state aid in competitive bidding cases (The Danish Competition

Authority 2007), and the Dutch government repeated Euroheat & Power's request for including also district cooling in the guidelines (The Dutch Government 2007). Also among the industries and NGOs there was continuously a long series of relevant actors which did not engage in the consultation: the various actors listed as 'missing' during the first draft consultation, both renewable energy organisations and environmental organisations, remained silent as before. Moreover, Euroheat & Power voiced no opinion during this consultation round, even if its previous arguments for including district cooling in the state aid guidelines apparently had yet to convince the Commission.

Of course, one should keep in mind that the formal consultation rounds only tell *part* of the story. As we know, the Commission also held multi-lateral discussions on the state aid guidelines, both in July and October 2007. Moreover, the state aid stakeholders might also have exerted influence in more informal arenas, through bilateral meetings with the various DGs within the Commission. The 23 interviews which have been conducted for this study provide valuable information as to the degree of such activities – and they all more or less paint the same picture: this was a reform process with only meagre stakeholder engagement, also with regard to the informal channels of influence (Author's interviews). In other words, both the written data and the interviews point in the same direction – there was no rush of stakeholders trying to influence the outcome of the state aid guidelines reform, at least not on the issues of renewable energy, cogeneration and district heating.

4.4 The Final Guidelines

On 23 January 2008, the DG Competition launched the new and final state aid guidelines (European Commission 2008a). As can be seen from the contents of these guidelines, the Commission was sensitive to *some* of the stakeholders' demands, but there were also suggestions for change which did not make it into the final guidelines. For instance, the aid levels ended up being the same as in the second draft – 60-80 percent – but the Commission accepted the demands for allowing state aid covering 100 percent of extra costs in competitive bidding cases. The suggestions to extend the rules to cover also district cooling, however, had not persuaded the Commission.

So, what patterns of influence have we seen in our review of the state aid reform process? And what do our findings indicate with regards to the three explanatory approaches which were set out at the outset of this article?

5 Stakeholder Influence on EU State Aid Policies – a Discussion

Having reviewed the reform of the environmental state aid guidelines, it is clear that one of the process' most striking features is the meagre participation of energy firms and various interest groups. Both during the initial questionnaire consultation, and during the subsequent consultations on the Commission's two drafts of the new state aid guidelines, the input from firms, interest groups and the environmental lobby was quite limited, and a long series of relevant stakeholders did not respond at all to the Commission's calls for input. This does not fit well with our expectation of a multi-level decision-making process with a high degree of direct engagement from private advocacy groups. Rather, it paints a picture of stakeholder passivity in EU state aid policies.

The Member States were somewhat more active, and of course firms and other non-governmental stakeholders might have channelled their influence through the traditional 'gateway' of the national governments. The Member States made sure to demand higher levels of subsidies – 100 percent in cases of competitive bidding – and their demands on this issue were met. All in all, however, the Member States did not provide overwhelming amounts of input on the issues of renewable energy, cogeneration and district heating. As we have seen, some of the national governments did not even send formal responses to the Commission's drafts. On district heating, there was no particular pressure, not even from the Eastern European Member States, in spite of their domestic interests in district heating. According to our intergovernmentalist expectation, we should have seen more active lobbying on this issue on the part of the new Member States.

In sum, it seems our 'baseline expectation' has been given the most support in this study: much of the credit for the changes in the new environmental state aid guidelines should be given to the EU executive. Overall, it was the Commission which connected the dots between the overall focus on climate change and increased use of renewable energy sources on the one hand, and the need for more generous state aid guidelines on the other. It was the Commission who 'designed' the EU's new environmental state aid policy approach, making sure it would go well with parallel policy-processes, such as the proposal for a new renewable energy directive. In particular it was the DG Environment and DG Energy who made sure that the new guidelines contained a more explicit approach towards district heating, even if none of the Member States or the other stakeholders had demanded such a change.

Faced with these findings, two pertinent questions arise: Firstly, is it at all surprising that the Commission was the key architect behind the new state aid guidelines? And secondly, does it matter? The outcome of the reform was, after all, quite beneficial to most renewable energy actors, and perhaps it wouldn't have made any difference if the stakeholders took a more active part in the policy-making?

As for the first question, it is of course true that the Commission has been given strong competencies when it comes to deciding on and enforcing state aid policies – and a strong Commission was our ‘baseline expectation’ at the outset of this article. However, much has changed in the recent years with regards to how EU state aid policy is drafted. As mentioned, the Commission is increasingly taking a more open line and actively seeking the opinions of the state aid stakeholders (McGowan 2000: 124). This was the approach taken also during the reform of the environmental state aid guidelines: the Commission arranged for a broad and open deliberative process, inviting inputs from any third party throughout a reform process which altogether lasted roughly two years. There was in other words no lack of *opportunity* for those who wished to try to influence the reform’s outcome. On this basis, one certainly could have expected a bigger turnout and a bigger engagement and attentiveness on the part of the stakeholders.

As for the second question, on whether it would have made any difference if the stakeholders *were* more engaged in the process, it is of course difficult to make assessments on counterfactual scenarios. However, two general judgements can be made: for one, a higher degree of engagement on the part of the stakeholders would have strengthened the democratic basis for the new state aid guidelines, thus increasing the acceptance and the legitimacy of the policy-changes. This can be said to be a *procedural* shortcoming of the reform process, a shortcoming with, in essence, normative implications. However, one can also speculate about whether an increased attentiveness on the part of the stakeholders might also have had effects on the reform’s *actual outcome*. For instance, perhaps increased pressure and more coordinated lobbying campaigns could have resulted in the inclusion of explicit rules on renewable district cooling in the guidelines, an issue which was mentioned a few times throughout the reform process, but which never really pushed its way through to the final guidelines. Or perhaps the state aid for fossil-fuelled district heating could have been ruled out of the guidelines if the environmental lobby had taken notice of it and decided to take a more active part in the reform process. Of course, these remain mere speculations in this context, but nevertheless they serve to illustrate that a higher degree of stakeholder engagement in the reform of the state aid guidelines could have made a difference, not only with regard to the procedural legitimacy of the policy-field, but also with regard to the actual content of the EU’s new environmental state aid policy.

So where were all the energy firms, the interest groups and the environmental lobby throughout the reform-process? Why the stakeholder passivity?

We suggest three possible answers to this question. Firstly, it might be that the reason for the low engagement in the reform process lies in the increasing turn towards market based support mechanisms for renewable energy in the EU. The Swedes have implemented a market-based support scheme for renewable energy, as have also Belgium, Italy, Poland and the UK (European Commission 2008d). Such support schemes, if they are designed and implemented correctly, do not entail state aid, and they will thus not have to abide with the state aid guidelines. Of course, for the

stakeholders who are covered by such support schemes, the reform of the state aid guidelines is not very pertinent.

Surely, the existence of market based support instruments can explain *part* of the energy sector's passivity in relation to the reform of the state aid guidelines. However, a large share of the renewable energy sector in the EU is still covered not by market based instruments but rather by support systems which entail some type of state aid (Ibid.: 13). With regard to this sector, the low level of engagement remains puzzling.

A different explanation to the lack of lobbyism on the state aid guidelines could simply be that the stakeholders at the time in question had a 'full schedule' and were too preoccupied to pay any attention to the changes which were emerging on the field of environmental state aid. The reform process took place at a time filled with several other and important policy-processes, processes which might very well have demanded the full and undivided attention of the stakeholders. Both the revision of the EU emissions trading directive (European Commission 2008b) and the making of a new renewable energy directive proposal (European Commission 2008c) targeted more or less the same actors which were implicated by the environmental state aid guidelines, and many actors probably just had to choose which policies they should prioritise, or put differently, 'which basket to put their eggs in' (Author's interviews). In this choice, there is much to suggest that the state aid guidelines were given the lower priority. Perhaps, then, if the timing of the environmental state aid reform had been different, the state aid issues at stake would have received more stakeholder attention?

This latter scenario resonates well with a third possible explanation for the lack of engagement: State aid policies are inherently difficult – they are complicated in their terminology and they are detailed in their content. They are about 'eligible costs', 'incentive effects', 'reference investments', and other somewhat technical issues. As Vedder (2003) puts it, state aid policy is no business for small and medium sized enterprises, which are generally 'ill-equipped' to keep up with the activities of Brussels, let alone with the complicated terminology of the DG Competition (Ibid.: 308). Vedder has a fellow partisan in one of this study's interviewees, who describes his working with giving input on the guidelines as 'so complicated it was horrible. To really understand them and to really give your input on them, you need much time and you need much resources' (Author's interviews). Another went on to elaborate on the many stakeholders' somewhat 'negligent' relation to state aid policy: 'In general, such policies [the state aid guidelines] have been left for the civil servants and the Commission's lawyers to figure out. For others, they are simply too complicated' (Ibid.).

Zooming out a bit, we see that our empirical findings actually question the very foundation of the analytical framework applied in this article. The premise that the actors involved in state aid policy-making act as 'utility maximising actors', engaging in the policy-process with clear preferences and working to achieve the best outcome for themselves, does not fit very well with the empirical data we have seen. True, the outcome of the reform turned out favourable to many of the stakeholders,

but this was no thanks to the hard work and strategising of the private sector. Rather, our findings paint a picture of a policy-making process in which the private sector stakeholders were passive and somewhat uncertain as to what their positions should be. Many of the stakeholders found the state aid guidelines highly complex and difficult to take a stand on, some bluntly admitted that they did not manage to follow up on them, and others yet just didn't engage in the policy-process at all.

Perhaps, then, an explanatory framework based on somewhat less hard-core interest-based expectations than the ones applied in this article would be better for our understanding of EU state aid policies? Perhaps state aid policy-making is in fact less marked by clear and established interests and utility maximising, and more by actors constrained by limited resources to engage and give input to a complex policy-issue? In fact, it might be more fruitful to view EU state aid policy processes through the lenses of so-called *bounded rationality*. This term somewhat 'softens' the traditional rational view of political decision-making, and implies that rational decisions often are not feasible in practice, because of the limited resources available for making them: 'boundedly rational agents experience limits in formulating and solving complex problems and in processing (receiving, storing, retrieving, transmitting) information' (Simon, quoted in Williamson 1981: 553, see also Simon 1991, Elster 1983 and March 1994). Due to the limitations of the scope of this article, we cannot go further into exploring the concept or its possible explanatory weight in this context. We simply state that the notion of bounded rationality might have much to contribute to the understanding of state aid policy-making. With that, we invite further studies of the policy-field.

6 Concluding Remarks

This article has presented a case study of EU environmental state aid policy-making. More specifically, it has investigated the recent reform of the environmental state aid guidelines, with a particular eye on exploring the degree of stakeholder pressure and lobbying on these guidelines.

Interestingly, our findings give a different picture than the one painted by scholars highlighting multi-level governance and increasing lobbying in the EU political system. In fact, our study indicates that state aid policy-making is marked by a generally low level of engagement and stakeholder influence, particularly on the part of industry, firms and NGOs. Even if the Commission arranged for a broad, deliberative process throughout the reform of the environmental state aid guidelines, the fact of the matter is that the new guidelines by and large remain the making of Commission officials.

We have suggested several possible explanations to the meagre stakeholder engagement. For one, the increasing turn towards market based support systems which do not entail state aid can perhaps explain part of the passivity amongst energy firms and interest groups. Second, it might be that the stakeholder simply had too full a schedule, and the environmental state aid guidelines were 'put in the shadow' of parallel policy-processes. A third and somewhat related explanation might be that the stakeholders found the issues at stake too technical and complex to engage in. Complicated matters are generally more difficult to politicise.

All in all, it seems that EU state aid policy-making might be better understood in an analytical framework which entails a less orderly and hard core interest-based view on decision-making processes. Perhaps more could be gained by looking at the policy-field through the lenses of bounded rationality? Further studies on the intriguing field of EU state aid policy-making are called for.

Appendix: The Study's Respondents

Dörte Fouquet, Director of the European Renewable Energies Federation (EREF). Interviewed in Brussels, 28 February 2008.

Andrea Jelitte, Assistant at the European Renewable Energies Federation (EREF). Interviewed in Brussels, 28 February 2008.

Eloi Piel, European affairs officer, Euroheat & Power. Interviewed in Brussels, 29 February 2008.

Folker Franz., Senior advisor of environmental affairs at BusinessEurope. Interviewed in Brussels, 27 February 2008.

Erik Berggren, Senior Adviser of legal affairs, BusinessEurope. Interviewed in Brussels, 27 February 2008.

Guido Lobrano, Adviser of legal affairs, BusinessEurope. Interviewed in Brussels, 27 February 2008.

Juho Lipponen, Head of energy policy and generation unit, Eurelectric. Interviewed in Brussels, 25 February 2008.

Arve Thorvik, Director of StatoilHydro's Brussels office. Interviewed in Brussels, 28 February 2008.

Sindre Finnes, Branch director of the industrial policy section of Norwegian Industry. Interviewed in Oslo, 17 December 2007.

Knut Baumann, Branch director of the industrial policy section of Norwegian Industry. Interviewed in Oslo, 17 December 2007.

Paal Frisvold, Senior Policy Adviser at the Brussels office of The Bellona Foundation. Interviewed in Brussels, 26 February 2008.

Agnethe Dahl, Environment counsellor of the mission of Norway to the EU. Interviewed in Brussels, 29 February 2008.

Marit Engebretsen, Energy counsellor of the mission of Norway to the EU. Interviewed in Brussels, 26 February 2008.

Bente Tranholm-Schwarz, State Aid Policy Unit, the DG Competition, European Commission. Interviewed in Brussels, 26 February 2008.

Johanna Bernsel, Case handler, section for State aids for Energy and Environment, the DG Competition, European Commission. Interviewed in Brussels, 26 February 2008.

Jörg Köhli, Principal economist, section for Environment and Energy, the DG Competition, European Commission. Interviewed in Brussels, 26 February 2008.

Andrea Hercsuth, Administrator, section for Regulatory Policy and Promotion of Renewable Energy, the DG Energy and Transport, European Commission. Interviewed in Brussels, 28 February 2008.

Tim Rusche, Administrator, DG Energy and Transport, European Commission. Interviewed in Brussels, 27 February 2008.

Anne Theo Seinen, Unit C2, DG Environment, the European Commission. Interviewed in Brussels, 26 February 2008.

Annette Kliemann, Deputy Director at the Competition & State Aid Directorate, EFTA Surveillance authority (ESA). Interviewed in Brussels, 29 February 2008.

Marianne Clayton, Officer at the Competition & State Aid Directorate, EFTA Surveillance authority (ESA). Interviewed in Brussels, 29 February 2008.

Erling Johan Hjelmeng, Professor of EU law at the University of Oslo. Interviewed in Oslo, 18 January 2008.

Ulf Hammer, Professor of petroleum- and energy law at the University of Oslo. Interviewed in Oslo, 30 January 2008.

Notes

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¹ EU state aid regulations set the standard also for the EFTA countries, due to the European Economic Area (EEA) agreement.

² Among other things, the state aid guidelines contain provisions on such issues as state aid for remediation of contaminated sites, aid for relocation of firms, aid for waste management, aid for energy saving and aid in the context of the EU emissions trading scheme.

³ A noteworthy exception is the Court's decision on the so-called *Preussen-Elektra* case in 2001 (European Court of Justice 2001; see also Vedder 2003: 281-83).

⁴ The new state aid guidelines' provisions regarding operating aid for renewable energy, co-generation and district heating are essentially the same as they were in the 2001 guidelines (which contained four different options as to how operating aid could be granted). In the new guidelines, however, the third of these options will be subject to a so-called 'detailed assessment' by the Commission (compare European Commission 2001; European Commission 2008a; See also annex I of European Commission 2008e).

⁵ It should be noted that quite a few Member States took the opportunity to call attention to their frustrations with the Commission's various methodologies for calculating the concept of 'eligible costs' (see for instance The Dutch Government 2007; The Norwegian Government 2007). Due to the scope of this article, we will not go into these issues in this article.

⁶ One single exception should be mentioned. Greenpeace sent a position paper after the Commission's first draft was issued (Greenpeace 2007). In this however, it focused exclusively on its opposition against carbon capture and storage, and had no input at all on issues of aid levels for renewable energy and district heating.

⁷ The two interest groups had different viewpoints on this issue: Cogen Europe wanted the definitions and efficiency criteria laid down in the so-called cogeneration directive (European Commission 2004) to apply also in the environmental state aid guidelines, whereas Euroheat & Power wanted the definitions and efficiency criteria laid down in the directive on the energy performance of buildings (European Commission 2002) to apply.

⁸ Neither the European Solar Thermal Industry Federation, the European Biomass Association, the European Geothermal Energy Council, the European Biomass Industry Association, the European photovoltaic Industry Association, nor the European Forum for Renewable Energy Sources participated in the consultation.

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