



## US Department of Energy reverses foreign entity restrictions for funding of energy-related research projects

In May 2009, the U.S. Department of Energy (DoE) released its initial Funding Opportunity Announcement (FOA) for the Advanced Research Projects Agency – Energy (ARPA-E) programme, which included restrictions on foreign entities participation in the R&D projects to be funded. This initial FOA, funded through the American Recovery and Reinvestment Act of 2009 (ARRA), was one of three FOAs being issued under the ARPA-E financial assistance awards and was narrowly focused on transformational R&D.

With regard to the foreign entities restrictions, the FOA noted that if a foreign entity participates in the proposed R&D project, no more than 25% of the ARPA-E funds may be expended by the combination of all foreign entities on the project. This restriction would apply to the combined performance of the foreign entities, regardless of whether the work is performed in the United States or a foreign location. The initial ARPA-E FOA also prohibited a foreign entity from serving as the lead of a team competing for ARPA-E funds.

The Commission was very concerned about these restrictions, which we learned were adopted in the spirit of "Buy American" and were not specifically mandated by the American Recovery and Reinvestment Act or any other law. In response to the criticism DoE received inter alia from the Commission, the second funding opportunity announcement issued on December 17, 2009 did not include such restrictions. The second FOA, which anticipates awarding agreements totalling up to USD \$30 million, does not have any restrictions on the foreign entities incorporated in the US leading the project and allows their full participation in the FOA. This FOA seeks to further technical objectives related directly to electrofuels, specifically innovation in the area of non-photosynthetic autotrophic production of infrastructure-compatible, energy dense liquid fuels.

The European Commission welcomes this significant reversal of the DoE's discriminatory eligibility restrictions included in the initial FOA. Although this is a positive development, the eligibility criteria only apply to the specific FOA and do not represent a comprehensive policy with respect to the US operations of foreign-owned companies. The Commission will continue monitoring future ARPA-E funding eligibility criteria for foreign companies interested in the US government R&D programs.

*For further information: DG Trade G.1 and G.3, DG Enterprise I.2 in cooperation with the EU Delegation in the US, E-mail contact: [TRADE-G1-MARKET-ACCESS@ec.europa.eu](mailto:TRADE-G1-MARKET-ACCESS@ec.europa.eu)*