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**Subject: State aid No SA.36204 2013/N – Denmark
Aid to photovoltaic installations and other renewable energy installations**

Sir,

1. Procedure

- (1) By letter dated 9 November 2005 (hereinafter “initial decision”), the Commission considered the scheme N 602/2004 (Support to environmentally friendly electricity production) as compatible with the Treaty on the Functioning of the European Union¹.
- (2) By letter dated 12 February 2013, the Danish authorities notified an amendment to the above mentioned scheme.
- (3) The Commission sent questions on 15 April, 22 April, 23 September, 2 October and 20 December 2013, to which the Danish authorities replied on 17 June, 25 June, 22 July, 9 September, 29 October 2013, 3 and 4 February 2014. Meetings between the Commission and the Danish authorities were held on 28 June 2013 and on 30 April 2014. Further questions were sent on 3 April, on 12 June and on 11 September 2014, and Denmark replied on 11 April, on 25 June, on 2 and on 11 July, on 24 and 29 September, and on 1 October 2014.

¹ With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the TFEU. The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 107 and 108 of the TFEU should be understood as references to Articles 87 and 88, respectively, of the EC Treaty where appropriate.

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2. Description of the aid

2.1 The previous aid scheme N 602/2004

- (4) The aid scheme N 602/2004 approved in 2005 included, among other measures, support for so-called “forward-focused technologies” such as wave power, solar energy, renewable energy powered fuel cells and biomass.
- (5) Plants based on these technologies which were connected to the grid after 21 April 2004 were to receive a price supplement that, in addition to the market price of electricity, amounted to DKK 0.60 per kWh in the first ten years after grid connection and to DKK 0.40 per kWh for the following ten years (see section 5.b of the initial decision).

2.2 The notified aid scheme

- (6) The purpose of the new scheme is to incentivise investments in various types of solar photovoltaic plants and renewable energy technologies, ranging from small household installations to larger installations. The solar panel capacity in Denmark shall be expanded to up to 800 MW by 2020.
- (7) The notified scheme is based on Act no.1390 of 23 December 2012 and Act no. 900 of 28 June 2013 amending the Promotion of Renewable Energy Act.
- (8) The scheme would have an overall budget of DKK 300 million (approx. EUR 40 million).
- (9) The aid will not be financed from the State budget, but through a public service obligation (“PSO”) tariff paid by consumers on their electricity consumption. In principle, the same PSO tariff is paid by all consumers and for all electricity supplied from the collective electricity grid. In the second quarter of 2014, it stood at 0.227 DKK per kWh. Reduced PSO tariffs apply for consumers with a consumption exceeding 100 GWh and for installations that generate electricity for their own consumption².
- (10) The tariff is collected by the distribution system operators (DSOs), but transferred to the Transmission System Operator (TSO), Energinet.dk, who manages payments according to the relevant legislation and sets the future tariffs on a quarterly basis. The PSO tariff to a large extent finances measures aimed at promoting green energy production. Indeed, in 2013, the share of the PSO tariff revenue affected to renewable energy support was 70%.
- (11) With its notification, as modified by the latest submissions, Denmark intends to grant support to solar photovoltaic (PV) and other renewable energy source (RES) installations according to the following modalities, described in recitals (12) to (15) below.

² These reductions are not dealt with in this decision, as they will form part of Denmark’s notification of the adjustment plan that has to be submitted according to points 194 *et seq.* of the Guidelines on State aid for environmental protection and energy 2014 -2020.

- (12) The support scheme covers three subsequent phases.
- (a) In principle, the date on which a given installation is connected to the grid will determine in which phase the installation falls and accordingly which support conditions will apply.
 - (b) Exceptionally, if the connection date does not fall within a given phase, a photovoltaic installation may still be supported according to the conditions of that phase (hereinafter referred to as “transitional arrangement”), provided that the following conditions (i) and (ii) are met:
 - (i) The installation developer entered into a binding and unconditional agreement to purchase a PV unit within the phase.
 - (ii) At least one of the following actions has been undertaken within the phase:
 - Filing of a planning law application;
 - Filing of a building permit application;
 - Notification of the TSO with a view to registration in the official database.
 - Filing of an application for grid connection with the TSO.
- (13) In each of the three phases, the scheme distinguishes different categories of aid, depending on the technology and the type and capacity of installation.
- (14) For these categories, up to five different support configurations are available: The aid will typically be granted to the beneficiary as a constant settlement price (consisting of the market price and a variable premium) for a certain number of years from the installation’s grid connection date. The general settlement price itself will be reduced each year in order to reflect the expected fall in equipment costs: An installation connected in 2014 will therefore receive a higher settlement price over the whole of its support period than an installation connected in 2015. In some cases, the aid will not consist in a settlement price, but simply in a fixed price premium.
- (15) Households which set up their own PV or RES plant will be able to use some of the electricity produced for their own consumption, instead of selling all of it to the grid (“net settlement”). This will generally be more advantageous, as long as the savings made by not having to purchase electricity from the grid are higher than the State aid received for selling the electricity to the grid. However, the net settlement will depend on the type of the plant and on the circumstances of electricity production (for instance, intermittent electricity production through solar or wind power may not always coincide with the periods of consumption). The advantages received from the net settlement have been included in the calculation of the aid levels set out below, in recital (23).

2.2.1 First phase of the aid scheme

- (16) The first phase of the aid scheme is set between the 20 November 2012 and the 19 March 2013 (both dates included). Installations which were connected to the grid within this phase may be supported if they fall within one of the following aid categories:
- (a) High configuration:
 - Eligibility is limited to joint PV installations, set up by a number of consumers who make a joint investment for an installation that delivers

electricity for several households and for the grid. The assumption is made that a joint solar PV installation does not exceed 6 kW per household.

- The beneficiaries receive one of the settlement prices listed in the table below for a total duration of 10 years.

Connection year	2013	2014	2015	2016	2017	2018
Settlement price ³	1.45	1.28	1.11	0.94	0.77	0.60

(b) Intermediate configuration:

- This concerns PV installations with a nominal capacity not exceeding 400 kW, including household PV installations, as well as small RES installations⁴ with a nominal capacity not exceeding 6 kW.
- They will receive a settlement price for a total duration of 10 years, which will decrease as follows:

Connection year	2013	2014	2015	2016	2017	2018
Settlement price	1.30	1.16	1.02	0.88	0.74	0.60

(c) Standard configuration:

- Large PV installations with a nominal capacity exceeding 400 kW as well as RES installations “of key importance for the future extension of renewable electricity”⁵ with a nominal capacity exceeding 6 kW are eligible.
- The standard configuration features a settlement price of DKK 0.60 per kWh in the first 10 years and of DKK 0.40 per kWh in the following 10 years, for a total duration of 20 years⁶.

(d) Price premium configuration:

- This configuration is available for other RES installations than those listed in recital (16)(b) and (c) above, e.g. stationary engines which use rapeseed oil instead of diesel oil.
- The aid consists in a price premium of DKK 0.10 per kWh, granted for 20 years.

2.2.2 *Second phase of the aid scheme*

- (17) The second phase of the scheme covers a period from the 20 March to 10 June 2013. Aid will be granted to installations connected to the grid in this phase according to the following modalities:

³ All settlement prices are given in DKK per kWh.

⁴ This includes in particular wave power installations, solar energy (non-PV) installations, biogas installations, fuel cells, and stirling engines, all to the extent that they are based on renewable fuels or renewable energy, but not household wind turbines, the support of which has subsequently been brought under the scheme notified under case SA.37122 (2013/N). The Danish authorities have confirmed that for any aid granted under this scheme in respect of bioliquids, the sustainability criteria would be met, as laid down in point 19(9) and footnote 24 of the Guidelines on State aid for environmental protection and energy 2014 -2020.

⁵ This again includes in particular wave power installations, solar energy (non-PV) installations, biogas installations, fuel cells, stirling engines.

⁶ This is equivalent to the support granted under the previous scheme N 602/2004. See above recital (5).

(a) High configuration:

- Eligibility is limited to joint PV installations mounted on a roof or integrated into a building which was not built solely to accommodate solar panels.
- The beneficiaries receive a settlement price according to the table below for a total duration of 10 years.

Connection year	2013	2014	2015	2016	2017	2018
Settlement price	1.45	1.28	1.11	0.94	0.77	0.60

(b) Intermediate configuration:

- This configuration is available for PV installations mounted on a roof or integrated into a building, for household PV installations with a nominal capacity not exceeding 6 kW and for small RES installations with a nominal capacity not exceeding 6 kW.
- They will receive a settlement price for a total duration of 10 years, which will decrease as follows:

Connection year	2013	2014	2015	2016	2017	2018
Settlement price	1.30	1.16	1.02	0.88	0.74	0.60

(c) Low configuration:

- Eligibility: joint PV installations neither mounted on a roof, nor integrated into a building.
- Aid: settlement price for 10 years based on the following table:

Connection year	2013	2014	2015	2016	2017	2018
Settlement price	0.90	0.84	0.78	0.72	0.66	0.60

(d) Standard configuration:

- All other PV installations than the ones listed in recital (17)(a), (b) and (c) above will receive support under the standard configuration. The same is true for RES installations of key importance for the future extension of renewable electricity with a nominal capacity exceeding 6 kW.
- The aid consists in a settlement price of DKK 0.60 per kWh in the first 10 years and of DKK 0.40 per kWh in the following 10 years.

(e) Price premium configuration:

- This configuration is available for other RES installations than those listed in recital (17)(b) and (d) above.
- The aid consists in a price premium of DKK 0.10 per kWh, granted for 20 years.

2.2.3 *Third phase of the aid scheme*

(18) The third phase of the scheme covers all installations which were (or will be) connected to the grid on the 11 June 2013 or later.

(19) In this third phase, there will be a basic support scheme for PV installations offering the standard configuration, i.e. a settlement price of DKK 0.60 per kWh for the first ten

years after grid connection and DKK 0.40 per kWh for the following ten years. The scheme is open to all PV installations which are not supported under the annual pool scheme, described below in recital (20).

(20) In addition, there will be an annual pool scheme for certain PV installations intended to finance the expansion of solar power generation capacity by 20 MW per year for 5 years from 2013 (i.e. a total expansion of 100 MW). Within the limits of the pool scheme, some categories of PV installations will be eligible for a higher support. Access will be granted on a “first come, first served” basis. All installations which fail in getting access to the pool scheme can be supported under the basic support scheme.

(a) High configuration:

- Eligibility: joint PV installations mounted on a roof or integrated into a building which was not built solely to accommodate solar panels
- The beneficiaries receive a settlement price according to the table below for a total duration of 10 years.

Connection year	2013	2014	2015	2016	2017	2018
Settlement price	1.45	1.28	1.11	0.94	0.77	0.60

(b) Intermediate configuration:

- Eligibility: household PV installations connected to the owner’s own consumption installation and with a nominal capacity not exceeding 6 kW
- Aid: settlement price for 10 years based on the following table:

Connection year	2013	2014	2015	2016	2017	2018
Settlement price	1.30	1.16	1.12	0.88	0.74	0.60

(c) Low configuration:

- Eligibility: joint PV installations neither mounted on a roof, nor integrated into a building
- Aid: settlement price for 10 years based on the following table:

Connection year	2013	2014	2015	2016	2017	2018
Settlement price	0.90	0.84	0.78	0.72	0.66	0.60

(21) Finally, as the annual pool scheme will only cover PV installations, all other RES technologies will be supported in the same way as in the first and the second phases:

(a) Intermediate configuration:

- This configuration is available for small RES installations with a nominal capacity not exceeding 6 kW.
- They will receive a settlement price for a total duration of 10 years, which will decrease as follows:

Connection year	2013	2014	2015	2016	2017	2018
Settlement price	1.30	1.16	1.02	0.88	0.74	0.60

- (b) Standard configuration:
- This is open to RES installations “of key importance for the future extension of renewable electricity” with a nominal capacity exceeding 6 kW.
 - They will receive a settlement price of DKK 0.60 per kWh in the first 10 years and of DKK 0.40 per kWh in the following 10 years, for a total duration of 20 years.
- (c) Price premium configuration:
- This configuration is available for other RES installations than those listed in recital (21)(a) and (b).
 - The aid consists in a price premium of DKK 0.10 per kWh, granted for 20 years.

2.3 Cost calculations for the different categories of beneficiaries

- (22) Denmark has submitted that the relevant market price is the spot price on the Nordpool electricity market. The average market price was just under DKK 0.30 per kWh in 2012. Over the period 2013-2022, the Nordpool market price is expected to increase to a yearly average of DKK 0.36 per kWh.
- (23) Denmark has provided detailed cost and aid calculations for the different types of plants. The following table summarises production costs (column 2), the difference between production costs and the market price of electricity (column 3), and the aid under the different aid configurations (columns 4 and 5). All figures have been discounted⁷ and are yearly averages expressed in DKK per kWh. Production costs include a return on capital of 10%.

1	2	3	4	5
Category of beneficiary, recital	Prod. costs	Cost diff.	Aid config.	Aid
<i>Beneficiaries which receive the same support across all phases</i>				
Small RES installation ≤ 6 kW, (16)(b)			Interm.	
– Biogas installation	2.70	2.35		1.22
– Wave power installation	3.88	3.52		0.82
– Fuel cell	3.32	2.96		1.30
– Stirling engine	3.20	2.84		1.30
Large PV installation > 400 kW, (16)(c)	1.74	1.38	Standard	0.19
RES installation “of key importance” > 6 kW, (16)(c)			Standard	
– Wave power installation	1.59	1.23		0.19
– Fuel cell	2.45	2.09		0.19
Other RES installation, (16)(d)			Premium	
– Rapeseed oil engine	2.37	2.01		0.09
<i>First phase beneficiaries</i>				

⁷ Denmark has applied a 1.85% discount rate, which is equivalent to the rate published by the Commission: http://ec.europa.eu/competition/state_aid/legislation/reference_rates.html (for Denmark and for the date 13.02.2013).

Joint PV installation, (16)(a)			High	
– Large installation	1.69	1.33		0.95
– Smaller installation, net settlement	2.18	1.82		1.02
PV installation ≤ 400 kW, (16)(b)			Interm.	
– Large installation	1.69	1.33		0.82
– Smaller installation, net settlement	2.18	1.82		1.42
– Household PV	2.57	2.21		0.82
– Household PV, net settlement	2.57	2.21		1.14
<i>Second phase beneficiaries</i>				
Joint PV installation on a roof or integrated into a building, (17)(a)			High	
– Large installation	1.69	1.33		0.95
– Smaller installation, net settlement	2.18	1.82		1.02
PV installation on a roof or integrated into a building, (17)(b)			Interm.	
– Large installation	1.69	1.33		0.82
– Smaller installation, net settlement	2.18	1.82		1.42
– Household PV installation, (17)(b)	2.57	2.21	Interm.	0.82
– With net settlement	2.57	2.21		1.14
Joint PV installation neither on a roof, nor integrated, (17)(c)			Low	
– Large installation	1.69	1.33		0.46
– Smaller installation, net settlement	2.18	1.82		0.57
Other PV installation, (17)(d)			Standard	
– Large installation	1.69	1.33		0.19
– Smaller installation, net settlement	2.18	1.82		1.26
<i>Third phase beneficiaries</i>				
<i>Basic support scheme</i>				
PV installation in the basic support scheme, (19)			Standard	
– Large installation	1.69	1.33		0.19
– Smaller installation, net settlement	2.18	1.82		1.26
<i>Annual pool scheme</i>				
Joint PV installation on a roof or integrated into a building, (20)(a)			High	
– Large installation	1.69	1.33		0.95
– Smaller installation, net settlement	2.18	1.82		1.02
– Household PV installation for own consumption ≤ 6 kW, (20)(b)	2.57	2.21	Interm.	0.82
– With net settlement	2.57	2.21		1.14
Joint PV installation neither on a roof, nor integrated, (20)(c)			Low	
– Large installation	1.69	1.33		0.46
– Smaller installation, net settlement	2.18	1.82		0.57

(24) According to the Danish authorities, no investment aid can be granted to the installations which receive aid under the notified aid scheme. Moreover, the Danish

authorities argue that the typical lifespan of an installation was 20 years, regardless of what type of plant and technology was concerned.

- (25) Denmark has committed to grant no aid to new installations with a capacity of 500 kW or more after 31 December 2015. Denmark has further committed to limiting the scheme in duration until 31 December 2016, as there is no visibility yet as to how the scheme would be financed after that date. In addition, Denmark has confirmed production costs would be assessed and updated at least once a year and that the application procedure would be modified in such a way as to be in compliance with points 49 to 52 of the Guidelines. Finally, Denmark has confirmed
- that in respect of existing RES installations using bioliquids that started operation before 31 December 2013, operating aid to food-based biofuels and bioliquids could only be granted until 2020;
 - that in respect of new installations that started operation on or after 31 December 2013, no operating aid would be granted to food-based biofuels and bioliquids.
- (26) Denmark has committed to open up the RES pilot tenders it will organise in 2015 and 2016 for producers established in other European Economic Area (“EEA”) States, up to a share of 6% of the tendered capacity or up to 2.4 MW during this two year period (the bigger of the two figures shall prevail). This opening will be subject to the conclusion of reciprocal cooperation agreements⁸ with the EEA States concerned and to the fact that the physical import can take place⁹.

3. Assessment

3.1 Existence of aid

- (27) Article 107(1) of the Treaty defines State aid as “any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods [...], in so far as it affects trade between Member States”.
- (28) Solar PV and RES installations which are eligible under the scheme will be getting financial support from the Danish State, which amounts to a selective economic advantage paid for by State resources. Given the level of integration of the internal electricity market, any State support to electricity and gas producers is likely to have an impact on cross-border trade and on competition on gas and electricity markets. The notified scheme therefore constitutes State aid¹⁰.

⁸ Articles 5 to 8 and 11 of 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, OJ L 140, 5.6.2009, p. 16 (hereinafter the “Renewable Energy Directive”).

⁹ The Danish authorities have indicated that the need to prove the physical import would not be required regarding countries where such proof is not feasible.

¹⁰ See State aid cases N 354/2008 – Denmark, Supplement for electricity from new wind turbines, recitals 32-41 (OJ 143, 24.6.2009, p. 6) and SA.35485 (2013/N) – Denmark, Aid for all forms of biogas use A, recitals 26-27 (not yet published).

3.2 Lawfulness

- (29) Denmark has notified the aid scheme to the Commission, indicating that the scheme would be put into effect only after a Commission approval. Denmark has therefore complied with its obligation under Article 108(3) of the Treaty.

3.3 Compatibility with the internal market

- (30) The Commission assessed the notified aid scheme on the basis of the Guidelines on State aid for environmental protection and energy 2014 -2020¹¹ (EEAG), and in particular sections 3.1 and 3.2 thereof.

3.3.1 Contribution to an objective of common interest

- (31) According to point 31 of the EEAG, the Member State needs to define precisely the objective of common interest pursued and explain the expected contribution of the scheme to this objective. The Danish authorities have stated that the notified scheme is intended to incentivise investments in renewable energy at all levels of society and thereby to contribute to a total expansion of solar panels of 800 MW by 2020. The scheme is therefore directed at the objective of common interest of promoting the deployment of renewable energy.

3.3.2 Need for State intervention

- (32) In principle, the Member State needs to demonstrate that State aid is necessary to remedy a market failure that otherwise would remain unaddressed (point 37 of the EEAG). But the Commission presumes that such a market failure still exists in the field of renewable policy (point 115). The information provided by Denmark, notably on the production costs of green electricity and the current electricity market price level, confirms that at current market conditions, investment in renewable energy installations is unlikely to occur without aid.

3.3.3 Appropriateness of the aid, proportionality and avoidance of undue negative effects

- (33) According to point 116 of the EEAG, the Commission will consider State aid to be the appropriate measure if the following conditions, set out in recitals (34) to (37), are met. In that case, the aid is also presumed to have only limited distortive effects.
- (34) First, for all schemes coming into force on 1 January 2016 or later, operating aid to renewable electricity producers will be compatible with the internal market if the following conditions are met (point 124):
- (a) The aid is granted as a premium in addition to the market price whereby the generators sell their electricity directly in the market.
 - (b) The beneficiaries are subject to standard balancing responsibilities, unless no liquid intra-day balancing markets exist.

¹¹ OJ C 200, 28.6.2014, p. 1.

- (c) The scheme ensures that generators have no incentive to generate electricity when market prices are negative.
- (35) However, the conditions in recital (34) (a) to (c) do not apply in case of aid granted to installations with an installed electricity capacity of less than 500 kW (point 125) or demonstration projects.
- (36) Moreover, aid must be granted in a genuinely competitive bidding process on the basis of clear, transparent and non-discriminatory criteria (point 126), subject to the following qualifications:
- (a) The requirement to conduct a competitive bidding process is mandatory only as of 1 January 2017 and only for new installations. In a transitional phase covering 2015 and 2016, only 5% of the planned new electricity capacity from renewable energy sources needs to be tendered through such a bidding process (point 126).
 - (b) No competitive bidding process is required where the Member State can demonstrate that such a competitive bidding process would have one of the shortcomings listed in point 126 (a) to (c).
 - (c) Aid may be granted without a competitive bidding process to installations with an installed electricity capacity of less than 1 MW and for demonstration projects (point 127).
- (37) In the absence of a competitive bidding process, the following conditions must be complied with (points 128 and 131):
- (a) The aid per unit of energy does not exceed the difference between the total levelised costs of producing energy (LCOE) from the particular technology in question and the market price of the form of energy concerned.
 - (b) The LCOE may include a normal return on capital. Investment aid is deducted from the total investment amount in calculating the LCOE.
 - (c) The production costs are updated regularly, at least every year.
 - (d) Aid is granted until the plant has been fully depreciated according to normal accounting rules in order to avoid that operating aid based on LCOE exceeds the depreciation of the investment.
- (38) These conditions are met by the Danish scheme:
- (39) First, it appears that the sizable share of the aid will go to household PV and RES installations of a capacity of 6 kW or less or larger PV installations not exceeding 400 kW. For these plants, the criteria listed above in recital (34) do not apply, and the aid beneficiaries do not need to be selected through competitive bidding procedures either. The aid has merely to meet the conditions listed in recital (37).
- (40) In that respect, Denmark has provided calculations on the costs and the aid levels for the different PV and RES installations covered by the three phases of the scheme. Although

support levels may vary depending on the phase and the type of plant concerned (in fact, five different configurations apply), the calculations show that in all phases and in all configurations, the average production costs of any given installation will exceed the sum of the benefits that may accrue to it (consisting of the State aid, the market price and the benefit derived from the own consumption of the green electricity produced). Indeed, as visible from the table in recital (23) above, the share of production costs not covered by sales at the market price (given in column 3) will always exceed the aid, even when including the advantages resulting from the net settlement of own consumption. Therefore, the aid will not exceed the difference between production costs and the market price concerned.

- (41) All calculations have been based on a return on capital of 10%, which can be considered normal for the industry¹². The Danish authorities have confirmed that no investment aid could be granted for installations which receive aid under the notified aid scheme. They have also confirmed that production costs would be updated at least every year and that adjustments to the aid levels would be made if necessary.
- (42) Finally, given that the typical lifespan of any plant concerned is 20 years, that support in all configurations will be granted for a maximum of 20 years after connection to the grid (and in many cases only for 10 years), and that the levels of aid do not cover the full difference between production costs and the market price concerned, the Commission considers that no aid will be granted beyond point in time on which the beneficiary's installation has been depreciated.
- (43) According to the Danish authorities, installations of a capacity exceeding 400 kW are unlikely to receive support, as the design of the notified scheme is expected to limit the size of eligible plants. However, it cannot be excluded that some larger installations even above 1 MW of capacity will receive support. The Danish authorities have therefore committed to modifying the scheme in such a way that no aid is granted to new installations with a capacity of 500 kW or more after 31 December 2015.
- (44) Finally, as far as the use of biofuels and bioliquids is concerned, the scheme is in line with point 113 of the Guidelines.
- (45) Overall, given that the Danish authorities have confirmed that the scheme would, at this stage, not extend beyond 1 January 2017, the conditions described above in recital (34) to (37) are met.

3.3.4 *Incentive effect*

- (46) According to point 49 of the EEAG, the Member State must demonstrate that the aid has an effect of incentivising the beneficiaries to change their behaviour in line with the objective of common interest pursued. In particular, the Commission considers that aid has no incentive effect for the beneficiary if work on the project has already started prior to the aid application by the beneficiary to the national authorities (point 50 of the EEAG). Moreover, the Member State must introduce a standardised application form fulfilling the requirements listed in point 51 of the EEAG and must ensure that the

¹² Cf. Case SA.35485 2012/N, Aid for all forms of biogas use – A, recital 36.

granting authority processes aid applications in a manner that is in line with point 52 of the EEAG.

- (47) First, it must be noted that, for all the installations concerned by the scheme, there is a cost gap between the costs for producing RES electricity and the benefits which these installations will receive both through selling electricity at the market price and through savings resulting from the net settlement. In the absence of aid, the installations will not be able to recoup their costs, and no investments will be undertaken. With the aid, however, the installations will have a share of their cost gap filled.
- (48) As regards the 20 MW pool scheme providing a higher price supplement for certain PV installations (under the third phase of the aid scheme), the Commission notes that the contract for the purchase of the installation must be subject to the condition that a commitment for a higher supplement is actually obtained. Hence, for beneficiaries eligible for aid under this specific configuration, no binding investments are expected to be made prior to the approval of the aid application.
- (49) In addition, the Danish authorities have committed to introduce a new application procedure in order to implement the provisions in points 50 to 52 of the EEAG, given that these have come into force on 1 July 2014, after the notification of the scheme: In that respect, applicants will be required to use an application form that features the information mentioned in the Guidelines, in particular the amount of aid and the counterfactual scenario in the absence of aid. Also, the administrative procedures will be adjusted so as to ensure that the counterfactual check described in the Guidelines will be made.

3.3.5 *Conclusion on compatibility*

- (50) The Commission therefore finds that the aid scheme is compatible with the criteria set out in the 2014 Environmental and Energy Aid Guidelines.

3.4 Compliance with other Treaty provisions

- (51) In accordance with point 29 of the Guidelines, as the contribution to the compensation mechanism has the aim of financing the support for green electricity, the Commission has examined its compliance with Articles 30 and 110 of the Treaty.
- (52) According to the case-law, a charge which is imposed on domestic and imported products according to the same criteria may nevertheless be prohibited by the Treaty if the revenue from such a charge is intended to support activities which specifically benefit the taxed domestic products. If the advantages which those products enjoy wholly offset the burden imposed on them, the effects of that charge are apparent only with regard to imported products and that charge constitutes a charge having equivalent effect, contrary to Article 30 of the Treaty. If, on the other hand, those advantages only partly offset the burden borne by domestic products, the charge in question constitutes discriminatory taxation for the purposes of Article 110 of the Treaty and will be contrary to this provision as regards the proportion used to offset the burden borne by the domestic products.¹³

¹³ Joined Cases C-128/03 and C-129/03 *AEM*, EU:C:2005:224, paragraphs 44 to 47; Case C-206/06 *Essent*, EU:C:2008:413, paragraph 42.

- (53) If domestic electricity production is supported by aid that is financed through a charge on all electricity consumption (including consumption of imported electricity), then the method of financing, which imposes a burden on imported electricity not benefitting from this financing, risks having a discriminatory effect on imported electricity from renewable energy sources and thereby violate Articles 30 and/or 110 of the Treaty¹⁴.
- (54) The aid scheme subject to the present notification will be financed through a PSO tariff paid by electricity consumers. The tariff will be levied on electricity consumption, which may therefore also cover electricity imported from other EEA States. The Commission therefore is concerned that the financing mechanism could entail discrimination against imports within the meaning of Articles 30 and 110 of the Treaty.
- (55) Denmark has argued that the financing of the aid scheme in question cannot be considered as an integral part of the scheme, and hence does not constitute a breach of Articles 30 and 110 of the Treaty. In this respect, Denmark notes that the PSO tariff covers the costs of a wide range of activities, including security of supply measures. Hence, the revenues from the PSO tariff are not necessarily allocated for the financing of the aid schemes for renewable energy. The Commission notes, however:
- that the notified aid scheme is financed through a charge imposed on electricity consumed in Denmark, domestic and imported production alike¹⁵;
 - that the charge is calculated on the amount of electricity consumed (and thereby imposed on the product itself)¹⁶;
 - that the aid scheme financed by the charge is open to domestic electricity producers only.
- (56) Where a Member State finances aid for domestic producers through a charge that is levied on imported and domestic products alike, the charge may have the effect of further exacerbating the distortion on the product market caused by the aid as such. For that matter, it is not necessary that the charge exclusively finances the aid, since the additional distortive effect can already be present if a sizable share of the revenues from the charge is used to financing the aid.
- (57) However, in order to remedy the potential discrimination, Denmark has committed to open up the RES pilot tenders it will organise in 2015 and 2016 for producers established in other EEA States, up to a share of 6% of the tendered capacity or up to 2.4 MW during this two year period (the bigger of the two figures shall prevail)¹⁷. The percentage figure has been established as a function of Denmark's total imports of green electricity from the neighbouring countries (Norway, Sweden and Germany) divided by the total electricity supply in Denmark and multiplied by the yearly new installed green

¹⁴ Case 47/69 *France v Commission*, EU:C:1970:60, paragraph 20. See also Case SA.38632 (2014/N) *Germany – EEG 2014 – Reform of the Renewable Energy Law* (not yet published in the OJ).

¹⁵ Electricity constitutes a product for the purposes of the provisions of the Treaty. See Cases C-393/92 *Almelo*, EU:C:1994:171, paragraph 28, C-158/94 *Commission v Italy*, EU:C:1997:500, paragraph 17, and C-206/06 *Essent Netwerk Noord*, EU:C:2008:413, paragraph 43.

¹⁶ Case C-206/06 *Essent Netwerk Noord*, EU:C:2008:413, paragraph 44.

¹⁷ According to point 126 of the Guidelines, the tenders organised in 2015 and 2016 need to cover at least 5% of the planned new electricity capacity from renewable energy sources (pilot tenders). For the time being, the size of the pilot tender in Denmark is expected to amount to 20 MW. However, Denmark has indicated that in order to attract foreign investors, the effective share of tendered capacity for which these investors could bid would amount to a total capacity of up to 2.4 MW.

electricity capacity. The imports of green electricity have been calculated as the average share of imports (more specifically imports not due to transit, but for consumption in Denmark only) from each of the neighbouring countries multiplied with the renewables share of total electricity production in each of the respective countries. The chosen formula reflects Denmark's situation as a transit country for electricity from Scandinavia, by only taking into account the share of imported electricity actually consumed in Denmark (given that only this share is effectively subject to the PSO charge).

- (58) The opening of the tenders to producers in other EEA States can be subject to the conclusion of cooperation agreements. This condition is in line with point 122 of the Guidelines and the Renewable Energy Directive which provides that Member States can set up cooperation mechanisms (Articles 6 to 11).
- (59) The participation in the tenders is further subject to evidence that the physical import of electricity from renewable sources will effectively take place, as far as the presentation of such evidence is feasible. This condition is in line with Articles 30 and 110 of the Treaty as without imports, no discrimination in the sense of Articles 30 and 110 would occur in the first place. In addition, Denmark needs to ensure that the electricity is indeed delivered to Denmark.
- (60) As the opening of the tenders removes the risk of discrimination against producers of green electricity in other Member States, the financing of the schemes through the PSO tariff will be compliant with Articles 30 and 110 of the Treaty for the duration of the scheme, i.e. until 31 December 2016. In principle, aid that has been granted until this date can be paid out even after 31 December 2016 if compliance with Articles 30 and 110 is assured.

4. Conclusion

The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site:

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Your request should be sent by registered letter or fax to:

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Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-President