



EUROPEAN COMMISSION

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C(2014) 8106 final

<p>In the published version of this decision, some information has been omitted, pursuant to articles 24 and 25 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus [...].</p>		<p style="text-align: center;"><b>PUBLIC VERSION</b></p> <p>This document is made available for information purposes only.</p>
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**Subject: State aid SA.36023 (2014/NN) – Estonia**

**Support scheme for electricity produced from renewable sources and efficient cogeneration**

Sir,

**1. PROCEDURE.**

- (1) Following pre-notification contacts, Estonia notified on 13 October 2014 a planned change to a support scheme for the promotion of the production of electricity from renewable energy sources (“RES electricity”) and from high efficient cogeneration (“CHP electricity”). On 23 October 2014 the Estonian authorities provided a language waiver and agreed that the decision will be adopted in English as authentic language.
- (2) On 27 September 2011, the Commission received a complaint registered as case SA.33725 (2011/CP) against an investment in a waste-fuelled CHP plant that would potentially benefit from the Estonian support scheme.

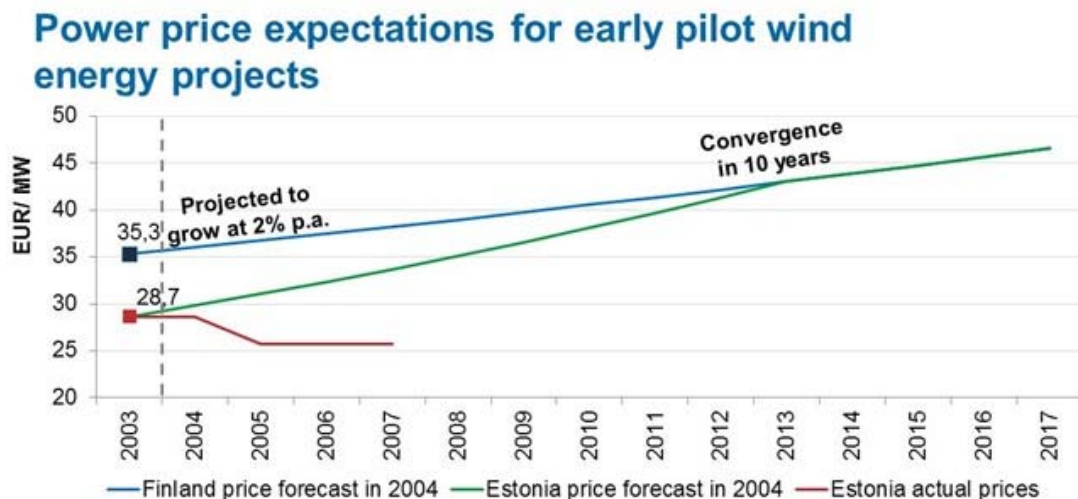
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## 2. DETAILED DESCRIPTION OF THE MEASURES CONCERNED

- (3) The notified measure concerned an amendment of a support scheme in favour of RES and CHP electricity. The support scheme was already in place before Estonia's accession to the EU, but it had not been notified before.

### 2.1. Renewable electricity support in Estonia between the country's accession in 2004 and 2005

- (4) Estonia submitted that a RES support mechanism already existed before Estonia officially joined the European Union. Such support scheme was created within the Energy Market Act which was passed in July 2003.
- (5) Under this scheme RES producers (wind, hydro powered, solar, geothermal, wave, tidal, landfill gas, sewage treatment plant gas and biogases) were entitled to receive 1,8 times the regulated price of electricity which was the price of Narva Power Plants<sup>1</sup> as approved by the Estonian Energy Market Inspectorate. The approved price for the Narva Power Plant was based on the costs and allowed profitability of oil shale based power generation.
- (6) In 2003 the price approved for the Narva Power Plant was 28.7 EUR/MWh. This price was expected to increase strongly as first the costs of oil shale electricity were expected to increase to reflect the ecological footprint (CO<sub>2</sub> emissions) and second because in view of the commissioning of the interconnector with Finland<sup>2</sup> Estonian prices would converge to the higher level of Finland. The expected average annual growth rate in electricity prices was around 4% (see Graph 1).



**Graph 1.** Expectations as to the rise of the price of electricity in 2003.

<sup>1</sup> The Narva Power Plants are a power generation complex near Narva, Estonia. The complex basically consists of oil shale-fired thermal power plants at the level of 1615 MW of installed capacity providing approximately 90% of the country's total electricity production.

<sup>2</sup> EstLink1 (350 MW DC link between Estonia and Finland) and potentially later EstLink2 (650 MW DC link)

- (7) Estonia explained that only seven small and medium size wind power plants were commissioned as pilot projects in the country under the scheme (in the range of 1 MW to 18 MW installed capacity). The beneficiaries would receive the aid in the first 12 years of their operation but not later than the end of 2015. Estonia further submitted that the electricity market was fully regulated at the time and only became open in 2012.

## **2.2. Renewable electricity support in Estonia between 2005 and 2007**

- (8) Estonia submitted that the expected growth in electricity prices did not materialize due to the low CO<sub>2</sub> emission prices and the delayed realisation of the EstLink 1 project. In order to pursue its renewable targets, Estonia decided to slightly modify its scheme in January 2005. The amended Energy Market Act RES set a tariff that was fixed for 12 years at the level of 51.8 EUR/MWh to be received not later than the end of 2015. The aid level was set 20 eurocents higher than the prevailing (flexible) aid level based on the price approved for the Narva Power Plant.
- (9) No new investment decision was taken under the newly modified scheme. The change also applied to the seven existing beneficiaries, still limited to the first 12 years of their operation.

## **2.3. Renewable and high-efficient CHP electricity support in Estonia between 2007 and the notification**

- (10) When the EU Renewable energy roadmap was approved in 2006 Estonia needed a strong RES support scheme to attract new investments and meet the EU 2020 RES target. The changes introduced in 2005 had not attracted new investments. In May 2007 the RES support scheme was amended. The new scheme also included for the first time aid to high efficient cogeneration of heat and power plants (hereinafter CHP) using natural gas, retort gas, peat and municipal waste as fuel source. Estonia introduced a parallel system according to which the beneficiaries could choose from two support options. The beneficiary could either apply for a fixed tariff (option 1) or a fixed premium over the prevailing market price (option 2).
- (11) According to option one (feed-in tariff) the following fixed rates applied:
- EUR 73.5 for each MWh of electricity produced from RES, including CHP using RES, for 12 years from the start of production; and
  - EUR 51.8 for each MWh of electricity produced in high-efficient CHP using natural gas, retort gas, peat and municipal waste for 12 years from the start of production.
- (12) According to option two a fixed aid amount was paid as premium to the market price:
- EUR 53.7 for each MWh on top of the market price for electricity produced from RES, including CHP using RES for 12 years from the start of production; and
  - EUR 32 for each MWh on top of the market price for electricity produced in high-efficient CHP using natural gas, retort gas, peat and municipal waste for 12 years from the start of production.

- (13) The scheme was only open to CHP units using natural gas as long as their installed capacity did not exceed 10 MW. In addition, wind energy support was subject to an annual subsidised production cap<sup>3</sup> of 400 GWh (as of May 2007).
- (14) Estonia explained that since the price for electricity was always higher than the feed-in tariff, no beneficiary chose to sell the produced electricity to the transmission system operator (hereinafter the TSO) under option 1. Therefore option 1 was eventually cancelled in February 2010. At the same time, in February 2010, Estonia decided to increase the annual cap to 600 GWh per year in view of the expected penetration of new wind capacities. The cap is still in force for the existing producers but has so far (2014) never been reached.
- (15) Estonia submitted that the changes also applied to existing plants, recalling that the changes introduced in 2005 did not tackle the negative profits of the seven existing beneficiaries.

#### 2.4. Renewable and CHP electricity support in Estonia as notified

- (16) Estonia intends to amend the RES and CHP support scheme that was in place since May 2007<sup>4</sup>. Estonia expects that no beneficiary will have a generation capacity larger than 125 MW or 200 MW (RES and CHP, respectively). The range of currently installed capacities varies from small hydro installations (starting from 15 kW) to 25 MW for biomass fuelled CHP.
- (17) Since some beneficiaries have already started their production under the current subsidy scheme, Estonia divided the envisaged scheme into two parts: A scheme for existing producers and a scheme for new producers (both RES and CHP). Existing producers are defined as installations which by 1st March, 2013 are (1) already producing electricity or (2) have a building permit or (3) are in contractual relations providing district heating or (4) have received financial investment support.

##### 2.4.1 Aid for existing RES and CHP producers

- (18) Estonia explained that when the latest amendment of the Electricity Market Act was finalised in 2012, the market price of electricity was in the range of 39.3 EUR/MWh (see Table 1).

		2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014*
Electricity price	EUR/MWh	26.7	26.7	26.7	29.2	30.8	29.4	46.4	39.2	40.4	43.1	43.0

**Table 1.** Evolution of the wholesale price of electricity in Estonia since the country's accession (Source: Estonian authorities). \* means prognosis

- (19) Therefore, the Government decided to fix the general support tariff rate at 93 EUR/MWh for RES producers which is the sum of the abovementioned market price and the 53.7 EUR/MWh premium introduced in 2007. According to Estonia, the fixed

<sup>3</sup> Support to any wind energy producer was stopped once the cap was reached in a calendar year in Estonia.

<sup>4</sup> The scheme which was in place since May 2007 led to an increase in installed wind energy capacity at a compounded average growth rate of 28%. There are 61 producers that have made the investment under the scheme (2014). According to Estonia's calculations, in order to fulfil the 2020 target, the total number of beneficiaries should be around 65-67 (depending on the installed capacity of the beneficiary).

rate was introduced to cap the aid and avoid overcompensation (the aid would be reduced if the electricity price increases). The cap is applicable to hydro powered installations above 10 MW<sup>5</sup> as well as all other RES producers<sup>6</sup>, except for CHP and co-firing plants (see below).

- (20) Similarly, the government decided to fix the general support tariff rate at 72 EUR/MWh for CHP producers which is the sum of the abovementioned market price and the 32 EUR/MWh premium introduced in 2007. The cap does not apply to CHP plants using natural gas with capacity of 10 MW.
- (21) Estonia explained that a floating subsidy based on the difference between the fixed cap and the market price will be applied to existing CHP plants using biomass as fuel should their installed capacity exceed 10 MW but not 50 MW. Estonia also explained that co-firing power plants for electricity attributable to RES also receive a floating subsidy based on the difference between the fixed cap and the market price as long as their installed capacity is at least 50 MW. The aid levels are presented in Table 2 below.

<b>Avg biomass price</b>	<b>CHP using RES (10 – 50 MW)</b>	<b>CO<sub>2</sub> price</b>	<b>Cofiring 50 MW and above</b>
<b><i>Below 16 EUR/MWh</i></b>	88 EUR/MWh	<b><i>Below 10 EUR/t</i></b>	35 EUR/MWh
<b><i>Between 16 - 20 EUR/MWh</i></b>	93 EUR/MWh	<b><i>Between 10 - 20 EUR/t</i></b>	26 EUR/MWh
<b><i>Between 20 - 24 EUR/MWh</i></b>	98 EUR/MWh	<b><i>Between 20,01 - 30 EUR/t</i></b>	17 EUR/MWh
<b><i>Above 24 EUR/MWh</i></b>	103 EUR/MWh	<b><i>Between 30,01 - 40 EUR/t</i></b>	8 EUR/MWh
For CHP below 10 MW, no changes (57 EUR/MWh premium)		<b><i>Above 40 EUR/t</i></b>	0 EUR/MWh

**Table 2.** Aid levels for CHP plants using RES and cofiring plants (for the RES part only).

- (22) This option is introduced only for existing producers as an exchange for the capping of the aid in case the price of biomass increases in the future, given that these producers have made their investment decisions according to the fixed premium scheme. The TSO paying the support will monitor the Estonian Statistics Board announced average price of biomass for the previous year and will set the according target level for the coming year. The Estonian Statistics Board receives its information on the biomass average price from the Estonian Competition Authority, which is obliged to coordinate the district heating prices in Estonia.
- (23) Since for co-firing installations partially using biomass as fuel ETS certificates have to be bought on the market, Estonia has decided to choose to set the subsidy level in accordance with the past month's ETS certificate price. The TSO shall monitor the actual past month's market price and shall pay the subsidy at a level which meets the ETS certificate price range. Estonia explained that the subsidy shall be paid for electricity generated by using biomass, whereas no other support measures apply.

<sup>5</sup> For smaller hydro installations there is no change and the premium of EUR 53.7 per MWh applies.

<sup>6</sup> Producers using wind, solar, geothermal, wave, tidal, landfill gas, sewage treatment plant gas and biogases complying with the definition of renewable energy in the Environmental Aid Guidelines as applicable at the time of granting the aid.

Estonia also explained that only one co-firing installation in Estonia received such aid. However, since early 2013 no aid is paid for co-firing installations.

- (24) In order not to jeopardise the RES and CHP investments existing producers retain the possibility to turn to the Estonian Competition Authority (ECA) in order to apply for a higher support level to ensure a reasonable rate of return from invested capital. The reasonable rate of return is set at 8-12% of the investment, but the ECA will determine whether a beneficiary can receive a higher support which for electricity produced CHP from RES may in any event not exceed 53.7 EUR/MWh as a premium. Estonia confirmed that such exceptional cases shall be notified to the Commission for an individual assessment.

#### 2.4.2 Production cost calculations for existing RES producers and installations of high-efficient CHP

- (25) Estonia provided production costs calculations for the plants that received support under the RES and CHP support schemes that were in place in the past. The production costs are calculated as the levelised costs of electricity (LCOE) based on the 12 year support period and taking into account investment and operating costs. Estonia substantiated that a normal return on capital would correspond to an average level of the weighted average cost of capital (WACC). The case studies prepared by independent consultants demonstrate that the reasonable level of the WACC would be at the level of 10.3% to 11%. Subsequently, and based on these studies Estonia decided to use a WACC for the calculation of the production costs for the wind and hydro plants which is 10.3% and for all the other plants 9%. These data also serve as input for the future competitive bidding process as explained in section 2.4.3 as the 2014 environmental (and energy) aid guidelines allow that the LCOE calculations include a normal return on capital.
- (26) The resulting LCOE are presented in table 3 and compared to the different aid levels that were applicable in the past.

	IRR	Total weighted average price of electricity (EUR/MWh)	LCOE (EUR/MWh)	Total cap (2014) (EUR/MWh)	Aid amount (EUR/MWh)		
					2004 – 2005	2005 – 2007	2007 – 2014 (including / resp. plus market price)
Wind park 1,4 MW, 2004	2.7%	36.91	123.90	93 (incl. market price)	1.8x reg. price	51.8 (incl. m.p.)	72 / 53.7
Wind park 3.0 MW, 2004	4.9%	36.91	109.33	93 (incl. market price)	1.8x reg. price	51.8 (incl. m.p.)	72 / 53.7
Hydro 1.0 MW, 2008	8.0%	49.41	108.38	53.7 + market price	-	-	72 / 53.7
Bio CHP 2.5 MW, 2008	4.7%	49.43	109.52	53.7 + market price	-	-	72 / 53.7
Bio CHP 6,5 MW, 2010	4.4%	53.24	112.04	53.7 + market price	-	-	72 / 53.7
Bio CHP 25 MW, 2010	10.8%	57.76	125.41	88-103 (incl. market price)	-	-	72 / 53.7

Biogas CHP 2.5 MW 2014	0.3%	57.91	410.20	53.7 + market price	-	-	53.7 (+ m.p.)
Landfill gas fuelled power plant 2.5 MW, 2007	1.6%	41.14	292.77	93 (incl. market price)	-	-	72 / 53.7
Wind park 25 MW, 2008	7.4%	38.84	139.25	93 (incl. market price)	-	-	72 / 53.7
PV 6 kW, 2012	Neg.	42.16	258.90	93 (incl. market price)	-	-	53.7 (+ m.p.)
CHP gas 2 MW, 2008	Neg.	38.84	80.65	32 + market price	-	-	51.8 / 32
CHP gas 6,5 MW, 2008	Neg.	38.84	81.93	32 + market price	-	-	51.8 / 32
WtE CHP 17 MW, 2013	7.4%	43.05	197.16	72 (incl. market price)	-	-	32 (+ m.p.)

**Table 3.** Levelised costs and aid levels for RES and CHP plants. (Source: Estonian authorities)

#### 2.4.3 Aid for new RES producers and high-efficient CHP producers

- (27) Estonia submitted that new producers are not going to be admitted to the scheme until 2015. According to the proposed Article 59 (2)-(6) of the Electricity Market Act, Estonia will allow new producers to join the scheme in case of a shortfall of electricity produced of RES in view of the Estonian Government's preliminary calculations to reach the climate policy goals set for 2020 (see Table 4). Each year the Government, in the form of a legally binding act, will fix the amount of the shortfall in production volume.

	Consumption	RES-E	
	GWh	%	GWh
2014	8400	12	1 008
2015	8500	13.2	1 122
2016	8600	13.2	1 135.2
2017	8700	15.2	1 322.4
2018	8800	16.1	1 416.8
2019	8900	15.7	1 397.3
2020	9000	17.6	1 584

**Table 4.** Renewable electricity annual targets (% compared to consumption and GWh) Source: Estonian authorities

- (28) Estonia explained that new installations could receive aid in a competitive bidding process. The call for the process will be announced by the Minister of Economic Affairs and Infrastructure. The minister will appoint the TSO to select the cheapest producer of the RES needed to fulfil the goal of 2020. According to Estonia, the winner needs to show that it can produce the renewable energy which is needed to meet the 2020 target.

The support will be paid out only for the amount that is shown on the trend line of the 2020 goal (additional RES produced will then not benefit from support).

- (29) Estonia explained that the detailed rules of the bidding procedure are not yet in force. The bidding process will however need to fulfil the main requirements set out in Article 3 of the Estonian Public Procurement Act, which among others includes requirements for transparency and non-discrimination. Estonia confirmed that the bidding process will be technologically neutral, i.e. the call to cover the needed annual RES capacity will not designate certain renewable technologies who could participate but it shall be the best bid which will win.
- (30) Estonia has presented examples to explain the different rules for different outcomes of the bidding procedure:
- a) Multiple winners: Producer no 1 states that it is able to produce half of the electricity required from renewable or CHP annually at a certain premium to the market price (EUR X/MWh). The next bidder (Producer no 2) states that it can produce up to the same amount of the electricity required from renewable or CHP annually at a level of EUR X+5/MWh as premium to the market price. The third bidder (Producer no 3) offers to produce up to the same amount of the electricity required from renewable or CHP annually at a level of EUR X+10/MWh as premium to the market price. In this case, the first winner is Producer no 1, since it has the lowest bid. The second one winning the subsidy is Producer no 2. Since the two cheapest producers Producer no 1 and Producer no 2 are enough to cover the called capacity, the public contract will be signed with Producer no 1 and Producer no 2 at their bids.
  - b) Only one winner: Estonia used the example of four possible opening bidders. According to this example, three of them would together cover the called capacity and one would cover the called capacity alone. At the same time the overall cost of support for the three producers would be higher than the cost of the fourth producer. In this case the producer providing the overall capacity at the lowest bid of premium over the market price would be the winner.
  - c) Two producers offer the same price: In this example, there are four bidders out of which two together could provide the total amount of electricity required from renewable or cogeneration annually at the same bid of premium over the market price. In this case, these two best bidders for an equal competitive price would have to offer new bids out of which the lowest bid of premium over the market price will win.
- (31) Once the TSO has selected the winning bidder, the Minister of Economic Affairs and Infrastructure shall recommend to the Estonian Government to pay the subsidy to the winner of the tender. After that, the producer or producers will receive support in a form of a premium on the electricity price for 12 years from the beginning of the production. As regards the winning bid, Estonia explains that no RES producer shall be entitled for an aid amount higher than 53.7 EUR/MWh (or 32 EUR/MWh in case of an efficient CHP producer) even if the lowest bid is higher than this amount. Additionally, Estonia explains that no winner using RES shall receive more than 93 EUR/MWh (or 72 EUR/MWh in case of an efficient CHP producer) as the total of (i) market price and (ii) aid in the form of a winning bid, thereby excluding the possibility of



overcompensation. Estonia also explained that the 600 GWh annual subsidy cap for RES producers from wind<sup>7</sup> will not be applicable to new producers as of 1 January 2015.

- (32) Estonia explained that for CHP it has a goal to preserve the consumption of primary energy in 2020 at the same level as it was in 2010 (32.77 TWh). Estonia confirmed that only high efficient CHP producers are eligible for support as defined in the Guidelines on State aid for environmental protection and energy 2014-2020<sup>8</sup> ("2014 EEAG"), (like for the past Community Guidelines on State aid for environmental protection<sup>9</sup> "2008 EAG"). Similarly to RES, the Minister of Economic Affairs and Infrastructure may call for a tender to get some high efficient CHP into the market.

#### 2.4.4 Specific rules on RES producers which should also apply to CHP

- (33) The envisaged support scheme introduces a premium support level which is capped with a total revenue per produced MWh. The electricity has to be sold to the market, no purchase obligation is foreseen. Estonia also confirmed that no beneficiary is freed from the responsibilities of standard balancing. Each producer must participate in the balancing mechanism.
- (34) Estonia submitted that the scheme in place has no measures to incentivize the beneficiary not to produce electricity when the electricity price is negative. At the same time there have not been any hours during which the price of electricity was negative. However, Estonia confirmed that the TSO will deduct the amount of negative price hours from the monthly production amount. This means that the envisaged scheme does not provide incentives for generators to produce when prices are negative.

### 2.5. Budget and duration

- (35) Estonia submitted a table which shows how much aid was granted to the renewable and cogeneration sectors since the date of accession until the end of 2014 (see Table 5).

		2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014*
CHP	Thousand EUR	0	0	0	989	1514	3113	4059	4711	4209	4601	7400
RES-E	Thousand EUR	1548	3870	4627	4632	8208	22771	41592	57245	62763	53200	65900

**Table 5:** Aid granted for production from renewable and high-efficiency cogeneration sources in Estonia since the country's accession (Source: Estonian authorities). \* means prognosis

<sup>7</sup> See recital 14 above.

<sup>8</sup> Guidelines on State aid for environmental protection and energy 2014-2020, OJ C 200/1, 28.06.2014.

<sup>9</sup> Guidelines on State aid for environmental protection, OJ C 82/1, 01.04.2008.

- (36) Furthermore, Estonia submitted that, as of the day of notification and for the whole period of the envisaged support scheme, the total estimated budget reaches EUR 719.9 million (including the grants to existing producers). The notified scheme will be in place until 31 December 2020<sup>10</sup>.

## **2.6. Financing of the support schemes**

- (37) Estonia explained that the financial burden has been shared among all electricity consumers on the basis of their electricity consumption through a levy imposed on purchased electricity. This means that the Estonian TSO has collected the finances from the end users of electricity. The levy for financing the scheme is calculated on the basis of the total inland consumption and it has been introduced to cover the needed percentage of production of renewable energy or electricity from cogeneration. Estonia stresses that the financing levy does not have a direct link to the origin of the electricity consumed. The levy was introduced as of 1 May 2007 and before that the scheme was financed through network tariffs. The network tariff itself was divided into an energy based part (EUR/MWh) and power based part (EUR/MW), both including the component to finance the support scheme.

## **2.7. Cumulation and transparency**

- (38) According to the notified scheme, small-scale renewable energy and CHP producers with an installed capacity at maximum 2.5 MW may receive both investment and operating aid. However, the investment aid is deducted from the production costs when Estonia determined the notified operating aid. Where the potential beneficiary benefited from an investment aid which was approved in case SA.26272 (N 373/2008)<sup>11</sup> no operating aid has been or will be paid. Estonia confirms that no other type of cumulation in the form of tax exemptions / reductions or similar has happened or is foreseen.
- (39) Estonia confirmed it will fulfil the transparency requirements as required by the 2014 EEAG. Estonia confirmed that information on the approved aid scheme will be made available on the website of the Ministry of Finance to the extent that it is not sensitive. In addition to the publication of such scheme, the link to the web site of the TSO responsible for paying out the subsidies will be added. On the TSO's webpage, the identity of the beneficiaries, the amount of subsidies granted to each beneficiary among with the date of granting the aid, the type of undertaking and the region where it is located and the principal economic sector in which the beneficiary has activities will be shown.

## **2.8. Complaint submitted by a waste management operator<sup>12</sup>**

- (40) On 27 September 2011 a waste management operator submitted a complaint alleging that Estonia intended to grant unlawful and incompatible state aid to undertakings producing combined heat and power from Municipal Solid Waste ("MSW"). The complainant indicated that no aid seemed to have been granted by the time of submitting the complaint but that the company Eesti Energia was commissioning a

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<sup>10</sup> Proposed paragraph 1 to section 108 of the Electricity Market Act.

<sup>11</sup> C(2008) 7847 – Regional aid – Wider use of renewable energy sources for energy production – OJ C/29/2009

<sup>12</sup> The operator has requested not to reveal its identity

potentially eligible plant in Iru, Estonia. The Waste to Energy CHP plant in Iru ("the WtE plant") was estimated to use up to 220,000 tonnes of MSW and produce up to 50 MW of heat and 17 MW of electricity. The complainant explained that pursuant to the Electricity Market Act the Transmission System Operator would pay EUR 0.0032 per kWh of electricity produced in the WtE plant to Eesti Energia ("the measure"). The complainant added that the measure would be financed by electricity consumers through the network charges. The beneficiary would receive aid for up to 12 years once the WtE plant started operations. The complainant concluded that the measure met all the criteria laid down in Article 107(1) of the TFEU and would therefore constitute state aid.

- (41) The complainant submitted that the measure would be incompatible with State aid provisions and in particular with Section 3.1.9 (waste management) of the 2008 EAG:
- First, the measure did not meet the hierarchical classification of the principles of waste management conditions. The complainant argued that the measure favoured the incineration of waste over for example more environmentally friendly options such as the production of RDF that allows higher fractions of the waste to be recycled. As a result of the measure the WtE plant would use up to 50% of all the MSW in Estonia.
  - Second, the incineration process used in the WtE plant did not go beyond the state of the art.
- (42) The complainant also argued that the measure would negatively affect competition in the market for waste management services. The measure would give a competitive advantage to operators managing waste by way of incineration against other operators - such as the complainant- that manage waste in a different manner.
- (43) Finally the complainant submitted estimates of the internal rate of return (IRR) of the WtE plant with and without the aid measure. According to the complainant's estimates and assuming a waste gate fee (fee received for collecting the waste) of EUR 30 per tonne of waste, the IRR would be around 12% with the aid measure and 10.5% without the aid measure. Furthermore on 17 September 2014 the complainant alleged that Eesti Energia had used lower waste gate fees values than the actual ones in the IRR calculations submitted to the Estonian authorities. As a result, the complainant argued that the IRR figure submitted by Eesti Energia to the authorities was underestimated.

## **2.8. Observations by Estonia on the complaint**

- (44) On 13 April 2012 Estonia confirmed that it had in place a support scheme as described in Section 2.7 above. Estonia also confirmed that no aid had been granted up until that date to the beneficiary referred to by the complainant. Estonia considered however that the measure did not constitute state aid as since the Estonian electricity market had not yet been fully opened, the measure did not distort competition. However, Estonia added that in view of the full opening of the electricity market in 2013, it would notify the support scheme in line with the applicable environmental (and energy) aid guidelines to the European Commission.
- (45) On 13 December 2013 Estonia confirmed that the WtE plant had received support as of July 2013. On 23 May 2014 Estonia reported that the aid measure aimed at supporting cogeneration and not waste management.

(46) Estonia also submitted that the IRR of the WtE was [...]\*. Estonia claimed that the figure was [...] the usual IRR in projects in the energy sector. Estonia added that [...]. Estonia claimed that when estimating the IRR it had used the actual data of the WtE plant. Estonia gave the following reasons for explaining the lower IRR estimate versus the one submitted by the complainant:

- The complainant had overestimated the lifetime of the WtE;
- The complainant had overestimated by more than 45% the gate-fee income for the lifetime;
- The complainant had overestimated more than 30% the amount of heat sold and by 10% the price over the lifetime of the WtE plant.

### **3. ASSESSMENT OF THE MEASURE**

#### **3.1. Existence of aid within the meaning of Article 107 (1) of the TFEU**

(47) Under Article 107(1) TFEU, 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, is incompatible with the internal market.

##### ***3.1.1. Existence of a selective advantage and impact on competition and trade***

(48) The support schemes that were in place in Estonia as of the moment of accession to the European Union, see sections 2.1, 2.2, 2.3 and 2.4, contain a selective advantage to the producers of electricity from renewable sources and cogeneration because the support in the form of feed-in tariffs and market premiums guarantees them a price for their electricity that is higher than the market price.

(49) The electricity market has been liberalised and electricity producers are engaged in trade between Member States so that the advantage granted to the beneficiaries is likely to distort competition and affect trade between Member States. In addition, Estonia explained that the country is a net exporter of electricity. The electricity produced by the beneficiaries is generally sold on the spot market where it enters in competition with all sources of electricity. The Estonian spot market is interconnected with other markets in particular the Nordpool Spot market.

##### ***3.1.2. Imputability***

(50) The financing of the support schemes is imputable to the State, as they are established by law and implementing decrees. In addition, it is the State (through the Ministry of Economic Affairs and Communication) that grants the entitlements and (through the TSO) monitors the correct implementation. As submitted by Estonia, the Estonian TSO Elering AS is a State-owned company and the State can exert direct control on its activities.

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\* *Business secret*

### 3.1.3. *Existence of State resources*

- (51) For advantages to be capable of being categorised as aid within the meaning of Article 107 TFEU, they must be granted directly or indirectly through State resources. The concept of "intervention through State resources" is intended to cover not only advantages which are granted directly by the State but also "those granted through a public or private body appointed or established by that State to administer the aid"<sup>13</sup>. In this sense, Article 107(1) TFEU covers all the financial means by which the public authorities may actually support undertakings, irrespective of whether or not those means are permanent assets of the public sector<sup>14</sup>.
- (52) In the present case, the Commission observes that the State controls, directs and influences the administration of the funds at stake: the State intervenes both as regards the level of the advantage set out in the Energy Market Act and its financing. The State has defined to whom the advantage is to be granted, the eligibility criteria and the level of support, but it is controlling the financial resources which cover the costs of the support to producers from renewable sources and cogeneration. In particular, the TSO is not free to establish the surcharge as it wants and is strictly monitored in the way the levy is calculated and managed. Moreover, the TSO cannot use the levy collected to finance any other type of activity. The financial flows are to be kept on separate accounts. Finally, the Commission notes that the levy is a charge in the sense that it does not correspond to the price that electricity suppliers would pay to the network operators for a good they have received. Indeed they pay the surcharge without obtaining any electricity in return.
- (53) The Commission therefore concludes that the TSO has been designated by the State with the task to administer the levy to finance the support to renewable energy and cogeneration and that the revenues from the levy constitute a State resource. The fact that the financial contribution was collected in the form of a network tariff for the period before 1 May 2007 does not alter the conclusion on the existence of State resources as the same reasoning holds as for the levy introduced on 1 May 2007.

### 3.1.4. *Conclusion on the existence of aid*

- (54) The Commission concludes that the support schemes in Estonia since its accession to the European Union, as specified in sections 2.1, 2.2, 2.3 and 2.4, entail State aid in favour of producers of energy from renewable sources and cogeneration. Therefore the Commission needs to examine their compatibility.

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<sup>13</sup> Case 76/78 *Steinike & Weinlig v Germany* [1977] ECR 595, paragraph 21; Case C-379/98 *PreussenElektra* [2001] ECR I-2099, paragraph 58; Case C-677/11 *Doux Eleveage and Cooperative agricole UKL-ARREE*, not yet published, paragraph 26; Case C-262/12, *Vent de Colère*, not yet published, paragraph 20; *Sloman Neptune*, paragraph 19.

<sup>14</sup> Case C-677/11 *Doux Eleveage*, not yet published, paragraph 34, Case T-139/09 *France v Commission*, paragraph 36, Case C-262/12, *Vent de Colère*, paragraph 21.

### **3.2. Lawfulness of the aid**

- (55) By implementing the measure as of the accession of Estonia to the European Union, the Estonian authorities have put the aid measure into effect before a final Commission decision. Thus, Estonia has breached the stand-still obligation set out in Article 108(3) TFEU.

### **3.3. Compatibility of the aid**

- (56) Considering the clear environmental objective of the schemes (promoting the generation of electricity from renewable sources and cogeneration), the Commission has assessed the compatibility of the measure at hand according to Article 107(3)(c) TFEU and in the light of the applicable environmental (and energy) aid guidelines.
- (57) Considering that the aid was granted during the period covering the applicability of different Guidelines, the Commission will assess the measure at hand pursuant to:
- a) the 2001 Community Guidelines on State aid for environmental protection<sup>15</sup> ("2001 EAG") as of the accession of Estonia; and
  - b) the 2008 Community Guidelines on State aid for environmental protection ("2008 EAG") as from 2 April 2008; and
  - c) the Guidelines on State Aid for Environmental and Energy 2014-2020 ("2014 EEAG") as from 1 July 2014.

#### ***3.3.1. Compatibility of the measure for renewable energy under the 2001 EAG***

- (58) Estonia's Energy Market Act came into force in 2003. However the compatibility of the schemes will be assessed from Estonia's accession to the European Union, i.e. from May 2004. The assessment concerns the scheme in place at the moment of accession and its subsequent amendments as specified in sections 2.1, 2.2, 2.3 and 2.4. The Energy Market Act allows operating aid to electricity generators using renewable sources as set out in point 6 of the 2001 EAG. Section E.3.3 of these Guidelines concerns rules applicable to operating aid for energy from renewable sources and Section E.3.4 lays down the rules for CHP produced electricity.
- (59) According to point 59 of the 2001 EAG, operating aid for the production of renewable energy can be granted to cover the difference between the cost of producing energy from renewable sources and the market price of the form of energy concerned. The aid can only be granted for plant depreciation and can include a fair return of capital. Any investment aid should be taken into account.
- (60) Estonia confirmed that it has never occurred that the market price was higher than the production costs of renewable energy. Estonia furthermore submitted a detailed calculation method for determining the production costs for different types of renewable energy installations based on the assumptions available at the moment the aid was granted (see recital 26)<sup>16</sup>.

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<sup>15</sup> Community Guidelines on State aid for environmental protection, OJ C 37 of 3.2.2001, p.3.

<sup>16</sup> According to the Estonian authorities no new producer joined the scheme after the changes introduced in 2005 until the new amendments in May 2007.

- (61) Furthermore, Estonia explained the determination of market price for the purposes of the calculation of the aid amounts and provided a detailed calculation of the rate of return used. As Estonia chose the lower rate of return to determine the maximum aid amount and the expected IRR of the supported installations were below the calculated average rate of return, the return is considered reasonable.
- (62) The aid granted under the schemes in question is provided during 12 years as of the start of operation. This is in line with point 59 of the 2001 EAG which states that operating aid may be granted only for plant depreciation, which is normally between 15 - 20 years of operation for the supported installations at hand.
- (63) Estonia confirmed that no investment aid was granted to the beneficiaries of operating aid until the adoption of the regional aid scheme N373/2008<sup>17</sup>, thus the Commission considers that the rules on potential cumulation of investment and operating aid as referred to by the second paragraph of point 59 of the 2001 EAG are complied with.
- (64) Based on the evidence provided, see in particular recital 26, the Commission concludes that the beneficiaries would not have undertaken their investments due to the higher costs of renewable energy and therefore the Commission concludes that the aid has an incentive effect.
- (65) The fact that the aid was revised both in 2005 and 2007 does not mean that the production costs for renewable energy exceed the market price. The change in 2005 fixed the aid amount at the level applicable in 2005 under the original scheme (i.e. 1.8 times the regulated price of electricity, see recital 8) thereby preventing that the aid amount would increase in line with an increase in the regulated electricity price. Such increase, however, was (initially) expected by the market when the investment decisions under the original scheme were taken and could continue as long as the aid amount was linked to the actual regulated price. In addition, Estonia confirmed that this possible increase of price was also taken into account by the government when setting the original aid level in 2003. Consequently, it is evident that the change in 2005 negatively affected the aid amount. This is further demonstrated by the fact that no new investment was undertaken since this change took place.
- (66) As Estonia submitted, the change in May 2007 was introduced because it had not been able to attract new investors in renewable energy under the conditions applicable at the time. The changes in 2007 took into account the expectations at the time the support scheme was set up, in particular a gradually increasing electricity price which would result in higher aid amounts. The changes in 2005 prevented such an increase in future aid which damaged the profitability of projects as reflected in the absence of any new investment being supported.
- (67) The Commission, furthermore, acknowledges that the introduction of the annual subsidized production cap of 400 GWh for wind energy in May 2007 contributes to avoid overcompensation of wind energy installations.

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<sup>17</sup> 10 December 2008, see recital 38 above.

(68) The calculations provided demonstrate that the cost difference referred to in point 56 of the 2001 EAG is not exceeded. Furthermore, the expected rate of return is well below the reasonable rate of return provided. Therefore, the Commission considers that the aid scheme for the support of renewable energy complies with the conditions of the 2001 EAG.

### *3.3.2. Compatibility of the measure for CHP plants under the 2001 EAG*

- (69) The Commission notes that aid has only been granted to CHP installations which fulfilled the criteria of conversion efficiency as defined in point 31 of the 2001 EAG. Therefore the measure is assessed under Section E.3.4 of the 2001 EAG. The Commission notes that Estonia confirmed that this type of operating aid did not exist before May 2007.
- (70) Estonia confirmed that the operating aid could only be granted to firms operating efficient CHP plants that distribute electric power and heat to the public where costs of producing such electric power or heat exceeded its market price. This is in line with points 31 and 66 of the 2001 EAG. The provision stipulates that operating aid to cogeneration may be granted in accordance with the rules in points 58 to 65 of the 2001 EAG.
- (71) In accordance with point 59 of the 2001 EAG aid must be granted in order to compensate for the difference between the costs of producing energy from renewable energy sources (i.e. cogeneration in the case at hand) and the market price of energy concerned.
- (72) Estonia submitted a detailed calculation method for determining the production costs for different types of cogeneration installations (based on capacity) using retort gas, peat and municipal waste as fuel. The revenues from heat production are included in the electricity cost calculations. Estonia also presented the determination and evolution of the electricity market price for the purposes of calculating the total revenues that takes into account the fact that the aid amount is granted in the form of top up to the market price.
- (73) No aid may be granted 12 years after the start of operation of the beneficiary, which is within the depreciation period. It is also clear from the calculations provided (see recital 26) that the operating aid for electricity from cogeneration only covers a fair return on capital. This is in line with point 59 of the 2001 EAG.
- (74) Similar to recital 63, Estonia confirmed that no investment aid was granted to the beneficiaries of operating aid until the adoption of the regional aid scheme N373/2008<sup>18</sup>, thus the Commission considers that the possible issue of a cumulation of investment and operating aid to cogeneration installations, as referred to by the second paragraph of point 59 of the 2001 EAG, is ruled out.
- (75) Based on the information provided, the Commission considers that the beneficiaries would not have taken their investment decisions due to the high additional costs of cogeneration production. Therefore the Commission concludes that the aid provided an incentive for the beneficiaries to invest in CHP projects.

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<sup>18</sup> 10 December 2008, see recital 38 above



- (76) The Commission thus comes to the conclusion that the aid supporting the production of electricity from efficient cogeneration is in line with the 2001 EAG.

### ***3.3.3. Compatibility of the measure for renewable energy under the 2008 EAG***

- (77) The Commission notes that the 2008 EAG applies to aid which was granted as of 2 April 2008. The provisions concerning support to renewable energy and cogeneration have not substantially changed.
- (78) Estonia confirmed that aid has only been granted to energy from renewable sources as defined by point 70(5) of the 2008 EAG. In accordance with points 107 and 109 a) of the 2008 EAG the aid can compensate the difference between the costs of producing energy from renewable sources and the market price of energy concerned. This is essentially the test which was also applicable under the 2001 EAG.
- (79) The support scheme continued unchanged until February 2010. Based on the detailed cost and market price calculations submitted by Estonia to determine the extra production costs for different types of renewable energy (see recitals 26 and 38), the Commission considers that the scheme complied with points 109 a) and b) of the 2008 EAG until February 2010. As regards point 109 b), Estonia confirmed that the investment aid granted is deducted from the production costs when determining the amount of operating aid.
- (80) In 2010 Estonia cancelled the possibility to receive a fixed tariff for each unit of renewable energy produced from wind and increased the annual subsidized production cap from 400 GWh to 600 GWh for wind energy in order to reflect the increase in installed wind energy capacity.
- (81) These modifications do not change the assessment of the Commission of point 109 a) of the 2008 EAG. The cap is in the first place a 'safety net' for Estonia to limit the expenditure under the support scheme and its increase reflects the increase in installed wind energy capacity. It does however not undermine the extra production cost calculations provided.
- (82) Estonia explained that since the adoption of the regional aid scheme N373/2008<sup>19</sup>, producers from renewable energy with a capacity smaller than 2.5 MW are entitled to receive operating aid and investment aid. However Estonia confirmed that the operating aid paid to beneficiaries who received investment aid is calculated based on the investment component of which the investment aid has been already deducted. This is in line with point 109 b) of the 2008 EAG. The Commission also notes that, according to the information available, there was only one producer who received both investment and operating aid.
- (83) As regards the incentive effect as required by point 142 of the 2008 EAG, the calculations provided by Estonia showed that the production costs of electricity from renewable energy sources have been higher than the electricity market price. Hence, without the notified aid, there would have been an insufficient incentive to undertake generation of electricity from renewable energy sources as such activity would have been unlikely to be economically viable.

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<sup>19</sup> 10 December 2008, see recital 38 above

- (84) Estonia confirms that no operating aid has been granted for the production of renewable electricity or combined production of renewable heat to installations in sites where the resulting renewable electricity generation capacity exceeded 125 MW. Accordingly, no individual notification of projects was required after 2 April 2008 pursuant to point 160b)iii) of the 2008 EAG.

#### ***3.3.4. Compatibility of the measure for cogeneration under the 2008 EAG***

- (85) The Commission notes that the aid as of 2 April 2008 has only been granted to high efficiency cogeneration as defined in point 70(11) of the 2008 EAG. Furthermore, the eligible installations comply with the requirement of overall primary energy savings compared to separate production as defined by Directive 2004/8/EC and Commission Decision 2007/74/EC as laid down in point 113 of the 2008 EAG.
- (86) Estonia confirmed that the operating aid for cogeneration was granted to undertakings distributing electric power and heat to the public, where the costs of producing such electric power or heat exceeded its market price; or for the industrial use of the combined production of electric power and heat, where it could be shown that the production costs of one unit of energy using that technique exceeded the market price of one unit of conventional energy. This is fully in line with the requirement of point 119 of the 2008 EAG. The same point also requires that operating aid to cogeneration may be granted in accordance with the rules for operating aid for renewable sources in points 107 to 111 of the 2008 EAG.
- (87) In accordance with point 109 a) of the 2008 EAG the aid must be granted in order to compensate for the difference between the costs of producing energy from renewable sources (i.e. cogeneration) and the market price of energy concerned.
- (88) Estonia submitted a detailed calculation method for the determination of the production costs for different types of cogeneration installations (based on capacity) using retort gas, peat and municipal waste as fuel and described in detail its elements which are in accordance with points 109 a) and b) of the 2008 EAG. As regards point 109 b), Estonia confirmed that the investment aid granted is deducted from the production costs when determining the amount of operating aid.
- (89) As set out above in recitals 79 – 81, the support scheme continued largely unchanged also for support to cogeneration since the 2008 EAG became applicable. The modifications do therefore not change the assessment of the Commission of point 109 a) of the 2008 EAG. In particular, the Commission recalls that no aid may be granted 12 years after the start of operation of the plant in accordance with point 109 a) of the 2008 EAG. Furthermore, Estonia confirmed that no investment aid under the regional aid scheme N373/2008 was granted for operating aid to cogeneration plants using fossil fuels. Thus the Commission considers that point 109 b) as well as Section 6 of the 2008 EAG is complied with.
- (90) As regards the incentive effect as required by point 142 of the 2008 EAG, the Commission notes that the calculations provided by the Estonian authorities showed that the production costs of electricity from high efficiency cogeneration installations are higher than the electricity market price. Hence, without the notified aid, there would have been an insufficient incentive to undertake generation of electricity in high

efficiency cogeneration installations as such activity would have been unlikely to be economically viable.

- (91) Estonia confirms that no operating aid has been granted to any cogeneration installation where the resulting cogeneration electricity generation capacity exceeded 200 MW. Accordingly, no individual notification of projects having received operating aid after 2 April 2008 was required pursuant to point 160b)v) of the 2008 EAG.

### ***3.3.5. Compatibility of the measure for renewable energy and high-efficient cogeneration under the 2014 EEAG***

- (92) The Commission notes that the notified amendments to the scheme concern aid for the generation of electricity from renewable sources within the meaning of point 19 (11) of the EEAG and for new producers of cogeneration aim to promote the generation of electricity from high-efficient combined heat and power installations within the meaning of point 19 (13) of the EEAG. Consequently the notified amendments to the scheme will be assessed on the basis of the compatibility conditions set out in particular in sections 3.1, 3.2, 3.3 and 3.4 thereof.

#### **3.3.5.1. Objective of common interest**

- (93) According to point 31 of the EEAG, Member States need to define precisely the objective of common interest pursued and explain the expected contribution of the scheme to that objective. Estonia indicated that the scheme intends to incentivise the production of electricity from renewable sources so that the share of renewables in the Estonian electricity supply rises at least to 25 per cent by 2020.
- (94) Furthermore, Estonia confirmed that the Water Framework Directive<sup>1</sup> is respected, with regard to the support provided to hydro power plants under the notified scheme (in line with point 117 EEAG).
- (95) Estonia also indicated that the scheme intends to incentivise the use of highly efficient cogeneration of energy which can include waste fuel. The heat generated would be used to cover the heating demand of municipalities. The Union set an objective of saving 20% of the Union's primary energy consumption by 2020. In achieving its energy efficiency objectives through supporting high efficient CHP production, Estonia declares that the use of waste for energy and fuel purposes as described in its National Waste Management Plan improves the environmental outcome of the waste management and therefore such measure conforms with the waste hierarchy principle which prioritises the way in which waste should be treated. In addition, Estonia submitted that it would take additional measures (e.g. decreasing tariffs for recycled waste treatment versus non-recycled waste treatment) to incentivise the re-use of waste. Therefore, point 118 of the EEAG is complied with.
- (96) The promotion of the development of renewable energy and high efficient cogeneration is one of the aims of the Union's environmental and energy policy. The scheme is therefore directed at an objective of common interest of promoting the deployment of renewable energy in accordance with Article 107(3) of the Treaty.

### 3.3.5.2. Need for State intervention

- (97) According to subsection 3.2.2 of the EEAG, the Member State has to demonstrate that there is a need for State intervention and in particular that the aid is necessary to remedy a market failure that otherwise would remain unaddressed. In the case of the production of RES electricity, the Commission presumes that a residual market failure remains, which can be addressed through aid for renewable energy, for the reasons set out in point 115 of the EEAG.
- (98) Aid for cogeneration addresses a market failure linked to negative externalities by creating individual incentives to meet environmental targets in the field of energy efficiency and resource-efficient energy generation. The information provided by Estonia showed that the current economic and legal framework cannot provide the necessary incentives to bring the beneficiary to invest in electricity generation by high-efficient cogeneration. The information in particular in points 25 and 26 shows that there are insufficient incentives to invest in energy efficient generation as the costs of pollution are not fully internalised. Therefore, a market failure exists in line with point 35 a) of the EEAG.

### 3.3.5.3 Appropriateness of the aid and incentive effect of the aid

- (99) According to points 40 et seq. of the EEAG, a measure is an appropriate instrument if it is able to address the policy objective concerned, given that other less distortive instruments may achieve the same results. Member States must show that State aid is an appropriate instrument to reach the objective. Point 116 EEAG considers that the Commission presumes that aid for renewable energy will be appropriate and the distortive effects of the aid will be limited provided all specific conditions of subsection 3.3 are met.
- (100) The Commission considers that there are no indications that the current economic and legal context in Estonia provides for a less distortive instrument to incentivise high-efficient cogeneration, in particular as the existence of the Energy Efficiency Directive is already taken into account. It can thus be concluded that the envisaged aid constitutes an appropriate instrument.
- (101) 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 granting authority processes aid applications in a manner that is in line with point 52 of the EEAG.
- (102) Estonia will apply a competitive bidding process for all aid granted to new renewable energy and cogeneration installations. The design of such bidding process will ensure that the beneficiary will apply for the aid before works are started and the financial information will follow from the bidding process. The aid has therefore an incentive effect, since it determines the beneficiaries to change their behaviour and invest in renewable energy projects and high-efficient cogeneration projects.

#### 3.3.5.4 Proportionality of the aid

- (103) According to point 69 of the EEAG, environmental aid is considered to be proportionate if the aid amount per beneficiary is limited to the minimum needed to achieve the environmental protection objective aimed for. Point 109 of the EEAG indicates that market instruments, such as auctioning or competitive bidding processes to select beneficiaries of aid to renewable sources should normally ensure that subsidies are reduced to a minimum.
- (104) According to point 151 of the EEAG, operating aid for high efficient cogeneration plants may be granted on the same conditions as operating aid to electricity from renewable sources. In line with point 151a) operating aid will be provided to undertakings generating electric power and heat to the public where the costs of producing such electric power or heat exceed its market price.
- (105) According to and in line with the requirement of point 124 of the EEAG, the notified aid will be provided in the form of a premium on the market price as beneficiaries are obliged to sell the electricity in the market. Furthermore, Estonia confirmed that beneficiaries will be subject to standard balancing responsibilities. No incentive will be given to produce during hours with negative electricity prices, as Estonia confirmed that the TSO will deduct the amount of negative price hours from the monthly production amount.
- (106) Estonia furthermore confirmed that no new renewable and cogeneration capacity will be commissioned in 2014. As of 1 January 2015 new renewable and cogeneration capacities will be granted aid only following a competitive bidding process. Estonia explained that the bidding process will be technologically neutral, i.e. it will be open to all electricity generators from renewable sources. Estonia furthermore confirmed that the applicable rules prohibit any discrimination and that the cheapest offer(s) will be selected.
- (107) As set out in recitals 29 - 31, with the introduction of a competitive bidding process Estonia also intends to apply certain capping mechanisms. The winning bid from a RES (or CHP producer) cannot be higher than a premium of 53.7 EUR/MWh (or 32 EUR/MWh in case of an efficient CHP producer). In addition, no beneficiary producing renewable energy will receive more than 93 EUR/MWh (or 72 EUR/MWh in case of an efficient CHP producer). The cap reflects the total of (i) market price and (ii) aid in the form of a winning bid, thereby excluding the possibility of overcompensation.
- (108) These caps are included to avoid overcompensation and the risk that a bidding process leads to increased support costs. However, the caps do not undermine the competitive and technological nature of the bidding process. It does not limit the potential beneficiaries as compared to the current scheme and the caps do sufficiently allow different technologies to compete. The Commission considers that the bidding process Estonia intends to put in place (see section 2.4.3. above) is competitive and is established on the basis of clear, transparent and non-discriminatory criteria.
- (109) The notified scheme is in line with point 129 of the EEAG, as the duration of support is limited to 12 years (therefore not exceeding the lifetime of the projects) and Estonia confirmed that the aid granted by means of a competitive bidding will not be cumulated

with any other aid (including any investment aid), and that other support previously received or granted will be deducted from the support under the operating aid scheme.

- (110) Estonia also intends to apply the abovementioned caps of 93 EUR/MWh for existing RES producers and 72 EUR/MWh for existing CHP producers, i.e. producers who have been on the market and received aid before 1 July 2014 and the obligations of point 124 of the EEAG will also be applied to such existing plants (see recital 105). While these producers currently benefit from a fixed premium on top of the market price, Estonia envisages replacing them by a floating premium fixing the revenues at the level of the cap. As a result of this method, the existing producers will not receive more than the cap even if the electricity market price rises (see Table 2 above).
- (111) In this respect, the Commission notes that the caps are set at the level of the average market price and the premium to avoid overcompensation. The capping also ensures that the reasonable rate of return will not be exceeded as shown by Table 2. It is particularly noted that the 12 year limitation of the aid period for each installation is not affected, i.e. no installation will receive aid for more than 12 years.
- (112) Considering the above the Commission takes the view that the amendment to cap the total revenues does not alter the aid level to an extent that is more advantageous for the existing CHP and RES producers, but rather aims to avoid future overcompensation in the foreseeable event of increasing electricity price for plants that are already benefitting from aid that was assessed under the 2001 EAG and the 2008 EAG.

#### 3.3.5.5 Distortion of competition and balancing test

- (113) According to point 90 of the EEAG, the Commission considers that aid for environmental purposes will by its very nature tend to favour environmentally friendly products and technologies at the expense of other, more polluting ones. Moreover, the effect of the aid will in principle not be viewed as an undue distortion of competition since it is inherently linked to its very objective.
- (114) In accordance with point 126 of the EEAG, it is presumed that the aid for renewable energy does not distort competition to an extent contrary to the internal market in view of the competitive and technology neutral bidding process used. As aid to cogeneration is granted in the same way as aid to renewable energy, the Commission concludes that the aid to cogeneration also does not distort competition to an extent contrary to the internal market.
- (115) Consequently, the Commission concludes that the distortion of competition caused by the notified scheme is balanced by the positive contribution towards common policy objectives.

### 3.3.5.6 Transparency

(116) According to point 104 of the EEAG, Member States have the obligation to ensure the transparency of the aid granted, by publishing certain information on a comprehensive State aid website. According to point 106 of the EEAG, Member States are requested to comply with this obligation as of 1 July 2016. The Commission notes that Estonia undertook and confirmed to ensure the transparency of the operating aid to be granted and publish details of awards under the competitive bidding in compliance with the EEAG provisions.

### 3.3.6 Conclusion on compatibility

(117) The Commission therefore finds that the notified aid schemes for renewable electricity and high-efficient cogeneration, as described in sections 2.1, 2.2, 2.3 and 2.4, are in line with the requirements of respectively the 2001 EAG, the 2008 EAG and the 2014 EEAG and, hence, are compatible with the internal market pursuant to Article 107(3)(c) TFEU.

## 3.4. Compliance with other Treaty provisions

(118) In accordance with point 29 of the EEAG, as the contribution to the compensation mechanism has the aim of financing the support for green electricity and cogeneration, the Commission has examined its compliance with Articles 30 and 110 of the Treaty.

(119) 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.<sup>20</sup>

(120) 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 CHP plants and thereby violate Articles 30 and/or 110 of the Treaty<sup>21</sup>.

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<sup>20</sup> 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.

<sup>21</sup> 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).

- (121) The aid scheme subject to the present notification is and continues to be financed through a levy paid by electricity consumers. The tariff is and continues to 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.
- (122) Estonia claimed that before 1 April 2010, the domestic electricity market was closed to competition; therefore the levy could not have been imposed on imported electricity. With this regard, Estonia confirmed the following:
- (i) Eesti Energia was the sole, integrated electricity producer/wholesaler/retailer in Estonia before the market opened. It had a legal obligation to serve domestic demand via its own production facilities, particularly from the Narva power plant;
  - (ii) Eesti Energia as electricity wholesaler had no bilateral agreements in place for imports with any foreign producer before 2010. As regards individual consumers, they were not allowed, therefore did not have such bilateral agreements with any foreign producer before 2010;
  - (iii) No foreign producer was allowed to place an order to sell electricity in the Estonian power exchange before 2010.
- (123) Taking into account the above reasons, the Commission considers that no discrimination within the meaning of Articles 30 and 110 TFEU could have taken place in Estonia as a result of the levy which was imposed only on national electricity consumption until 1 April 2010.
- (124) Estonia also argued that the financing of the aid scheme in question cannot be considered a discrimination towards imported electricity as Estonia is a net electricity exporter and it imports foreign electricity only on rare occasions and exceptional times of the year. The Commission notes, however, that the fact that Estonia is an overall net exporter, does not exclude the possibility that there might have been imports consumed in Estonia and therefore compliance with Articles 30 and 110 of the Treaty needs to be assessed.
- (125) However, in order to remedy the potential discrimination, Estonia committed to open up the RES and cogeneration bidding processes (tenders) as of 1 January 2015 for producers established in other EEA States without any restriction on the capacity. In order to enable the accounting of RES imported electricity towards the Estonian RES-target pursuant to Article 3(1) of the Renewable Energy Directive (RED)<sup>22</sup>, the opening of the bidding processes to producers in other EEA States can be subject to the conclusion of cooperation agreements pursuant to Articles 6-11 of RED. Estonia explained that such a condition applies for the foreseen tenders under the notified scheme. The Commission accepts this condition as being in line with point 122 of the 2014 EEAG and the RED which provides that Member States can set up cooperation mechanisms (Articles 6 – 11).

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<sup>22</sup> 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. 16–62)



- (126) To a large extent the process for CHP is the same as for the tender for new RES capacities, the only difference is that the produced and supported electricity must be consumed in Estonia.
- (127) As for the levies that have already been collected, Estonia intends to ensure that the benefit of the share of the levy that the foreign products have contributed to the financing of the support scheme in the past will be returned to foreign producers in the form of an increased potential for the import of foreign electricity. This plan takes into consideration the present state of Estonia's infrastructure for the interconnection with foreign transmission networks carrying electricity from suppliers from outside the national borders. This infrastructure presents congestions towards Latvia and is insufficient even for 'standard' levels of use, let alone for seasonal peaks or emergency situation. Estonia puts forward that the TSO is currently investigating the possibility to build an additional interconnector to the Latvian border – the Sindi-Riga 330 kV interconnector. Estonia also explained that the interconnector is needed to establish the NordBalt (interconnector between Sweden and Lithuania), setting up a transit corridor between the Baltic States, Finland and Sweden. Estonia explained that the new interconnector will raise the trading capacity by approximately 500 MW. Furthermore it is a vital technical precondition to synchronize Estonia with Europe. The expected date of commissioning is the end of 2019.
- (128) As any potential discrimination takes place only for electricity consumed in Estonia, the Commission accepts that transit electricity can be accounted for. It also takes into account the functioning of the Nordpool spot market. The amount of levy imposed on imported renewable and co-generated electricity consumed in Estonia has been approximated as the average share of imports (more specifically imports not due to transit, but for consumption in Estonia only – physical imports) from the neighbouring countries (Finland and Latvia) multiplied with the renewable electricity and high efficient CHP share in total electricity production in each of the respective neighbouring countries. Estonia established the exact amount of physical imports and divided them among Finland and Latvia based on the flow data of the interconnectors between these countries. The data on interconnector capacities show that imports from Finland have been significantly larger than imports from Latvia. The chosen formula reflects Estonia's situation as a transit country for electricity from and to Scandinavia.

	2010	2011	2012	2013	2014*	Total
Inland electricity production (GWh)	13 050	12 886	13 004	14 071	14 100	
Inland consumption (GWh)	8 006	7 824	8 139	8 060	8 060	
Physical import, TSO (GWh)	6	8	32	15	15	
Levy collected (thousand EUR/GWh)	8.1	6.15	9.7	8.7	7.7	
Max levy to be reimbursed from imports (thousand EUR)	48.6	49.2	310.4	130.5	115.5	654.2
Physical import share, Finland	86%	94%	99%	98%	82%	
Max levy to be reimbursed for electricity coming from Finland (thousand EUR)	41.79	46.25	307.30	127.89	94.71	
Renewables output rate in Finland	28%	29%	30%	30%	30%	
CHP output rate in Finland	29%	29%	29%	29%	29%	
Discriminatory levy collected from imported RES and CHP electricity from Finland (thousand EUR)	23.82	26.83	181.31	75.45	55.88	363.29
Physical import share, Latvia	14%	6%	1%	2%	18%	
Max levy to be reimbursed for electricity coming from Latvia (thousand EUR)	6.8	2.95	3.1	2.61	20.79	
Renewables output rate in Latvia	42%	45%	45%	45%	45%	
CHP output rate in Finland	47%	47%	47%	47%	47%	
Discriminatory levy collected from imported RES and CHP electricity from Latvia (thousand EUR)	6.05	2.71	2.85	2.4	19.13	33.14
<b>Total discriminatory levy collected from imported RES and CHP electricity from Latvia and Finland (thousand EUR)</b>	<b>29.87</b>	<b>29.54</b>	<b>184.16</b>	<b>77.85</b>	<b>74.93</b>	<b>396.43</b>

**Table 6.** Levied renewable and CHP based electricity imports consumed in Estonia (Source: Estonian authorities) - \* means prognosis

- (129) Taken into account these assumptions, the levies from imported and consumed renewables and electricity produced in cogeneration mode are estimated to be EUR 396 430 (Table 6 above). Estonia confirmed that this amount will be invested in the construction of the abovementioned interconnector between Latvia and Estonia.
- (130) The Commission notes that Estonia does not require any capacity restriction in the opening of the bidding processes to producers in other EEA States. Therefore, Estonia is expected to open the bidding processes to producers with no limits as regards the capacity for which those producers can compete.

- (131) The information in point 128 shows that the amount of imported electricity consumed in Estonia is very low. Based on the figures provided in table 6, the proportion of the total imported electricity consumed in Estonia does not exceed 0.39% of national consumption (2012) and was as low as 0.07% in 2010. The share of imported electricity generated from renewable sources or CHP production is even lower.
- (132) The Commission thus considers that in view of the expected opening of the bidding processes and the reallocation of the levies collected in the past from imported and consumed renewable and co-generated electricity to the construction of an interconnector project between Estonia and Latvia, the financing of the aid schemes complies with Articles 30 and 110 TFEU.

### **3.5. The complaint submitted by a waste manager operator**

- (133) The Commission considers that the aid granted to Eesti Energia for producing electricity in the WtE plant constitutes state aid for the reasons laid down in Section 3.1 above.
- (134) Estonia has confirmed that the purpose of the measure is to promote high-efficient cogeneration. As the aid was granted as of July 2013, the Commission has assessed the compatibility on the basis of the 2008 EAG and in particular the conditions laid down in Section 3.1.7 thereof.
- (135) While the complainant (initially) argued that the measure did not meet the compatibility requirements of Section 3.1.9 (waste management) of the 2008 EAG, Estonia reported that the WtE plant qualified as high efficient cogeneration plant pursuant to the Energy Efficiency Directive. Estonia confirmed that the WtE plant was eligible to receive aid under the support scheme described in Section 2.3 above. The Commission concluded in recital 118 that the support scheme was compatible with Section 3.1.7 of the 2008 EAG.
- (136) As the measure aims at supporting cogeneration, the Commission considers that the measure does not need to meet the compatibility requirements in Section 3.1.9. of the 2008 EAG. The Commission therefore considers that the considerations summarised in Section 2.7 above concerning non-compliance with Section 3.1.9 of the 2008 EAG are unfounded.
- (137) The Commission equally considers that the concerns regarding competition distortions in the waste management sector are unfounded. Point 72 of the 2008 EAG states that measures that meet the relevant compatibility criteria in points (73) to (146) may be found compatible under Article 107(3)(c) TFEU. As provided in point (160) of the 2008 EAG only certain individual cases need to be subject of a detailed assessment to decide if the aid is compatible with the internal market. As the electricity capacity of the WtE plant (17MW) is below the 200MW threshold set out in point (160)(b)(v) of the 2008 EAG, the Commission does not consider it necessary to conduct a detailed assessment of the measure once it has assessed in paragraph section 3.5.5 above that the underlying support scheme to cogeneration is compatible with the internal market.

#### 4. CONCLUSION

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

The Commission observes that the decision is valid since the accession of Estonia to the European Union (1 May 2004) until 31 December 2020.

The Commission reminds the Estonian authorities that, in accordance with Article 108 (3) TFEU, any plans to refinance, alter or change this aid have to be notified to the Commission pursuant to provisions of the Commission Regulation (EC) No 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (now Article 108 TFEU).<sup>23</sup>

The Commission further reminds Estonia that individual aid granted on the basis of the scheme remains subject to the notification obligation pursuant to Article 108(3) of the Treaty if the aid exceeds the notification thresholds of paragraph 20 of the EEAG and is not granted on the basis of a competitive bidding process.

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:

<http://ec.europa.eu/competition/elojade/isef/index.cfm>

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

European Commission  
Directorate-General for Competition  
Directorate for State Aid  
State Aid Greffe  
B-1049 Brussels  
Belgium  
Email: stateaidgreffe@ec.europa.eu  
Fax No: (0032) 2-296.12.42

Yours faithfully,  
For the Commission

Joaquín ALMUNIA  
Vice-president

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<sup>23</sup> OJ L 140, 30.4.2004, p. 1.