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**Subject: State Aid SA.42424 (2015/N) – Denmark**  
**Reduced contribution to financing of RES support for energy-intensive users**

Sir,

**1. PROCEDURE: NOTIFICATION, CORRESPONDENCE, DEADLINE ETC.**

- (1) By an electronic notification validated on 2 July 2015, registered at the Commission on the same date, the Danish authorities have notified a planned aid in the form of a reduced contribution to financing of support for electricity from renewable sources (RES) for energy-intensive users (EIUs).
- (2) Further to requests from the Commission, the Danish authorities provided additional information on 16 July 2015 and on 21 August 2015.

**2. DETAILED DESCRIPTION OF THE MEASURE**

**2.1. Reduced contribution to financing of RES support for EIUs**

- (3) In Denmark, the costs of the support for electricity from renewable sources are financed through a portion of the so-called PSO (public service obligation) tariff charged on electricity consumers.
- (4) The PSO tariff finances various activities relating to security of supply and to the promotion of environmentally friendly energy production. Around 60-70 % of the revenue collected through the PSO-tariff is used to finance the support for

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electricity from renewable sources. The notified aid scheme relates only to the portion of the PSO tariff that serves to finance support to the production of electricity from renewable sources.

- (5) The PSO tariff rate is determined on a quarterly basis as a fixed amount per kWh of electricity. At the time where the tariff for the coming quarter has to be settled, the actual expenses for this quarter are not yet known, and therefore the tariff is settled according to expectations regarding electricity consumption, electricity production and electricity market price. This leads to a difference between tariff revenue and realised expenses. This difference is, however included in the tariff for the following quarter, in order to secure that the revenues and the expenses approach each other. In 2014, the PSO-financed support to renewables amounted to DKK 0.1456/kWh (2014 average figure).
- (6) The Danish Transmission System Operator (TSO), Energinet.dk, calculates the PSO-tariff to be levied on the consumers and is responsible for distributing the revenues to the various activities covered by the tariff, including the granting of aid to the producers of renewable electricity. The local grid companies are responsible for charging the consumers and settling the payment with Energinet.dk.
- (7) In order to reduce the costs of electricity-intensive companies resulting from the financing of support to energy from renewables through the PSO tariff, Denmark decided to establish the pool scheme subject to this notification under which the beneficiaries will receive a subsidy on the basis of their electricity consumption.
- (8) The main objective of the scheme is to ensure that electricity-intensive companies are not burdened by the PSO tariff to such a degree that it significantly impairs their competitiveness, but at the same time encourage energy-efficiency improvements in these companies, through energy-efficiency agreements.
- (9) Denmark has estimated that the subsidy will be around DKK 0.07/kWh. This is based on the expectations of a total electricity consumption eligible for support of 2.6 TWh (2012 figures), and an annual budget of the scheme of DKK 185 million (approximately EUR 24.8 million)<sup>1</sup>. The Danish authorities expect the total consumption of electricity eligible for support to remain stable throughout the duration of the scheme (i.e. until 2020).
- (10) As Denmark intends to disburse the entire pool scheme among the beneficiaries, the subsidy per kWh may however vary, e.g. depending on the actual renewable share of the PSO tariff and the amount of electricity consumption eligible for support the actual year. The subsidy rate will be calculated each month based on the actual electricity consumption of the beneficiaries, and will be capped at 85 % of the estimated RES share of the PSO levy applicable that month.
- (11) The beneficiaries will not immediately receive the full estimated subsidy, but only a share of it. The exact share has not been determined, but will in all likelihood fall between 60 % and 75 %. In addition, the Danish authorities will verify, at the closure of every quarter, once the actual RES expenditure for that quarter is known, that the aid which has been paid out does not constitute more than 85 %

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<sup>1</sup> Euro amounts are based on the exchange reference rate as applicable on 2 July 2015 (the date of notification)

of the actual RES expenditure financed through the PSO levy during the previous quarter. If payments have been made in excess of the 85 % rule, the excess amounts will be deducted from the coming month's subsidy of the concerned beneficiary. The rules of repayment of excess subsidies would, if deemed necessary, also apply to this instance.

- (12) At the end of the year, once the total annual electricity consumption eligible for aid and the total RES expenditure is known, the beneficiaries will receive the remaining share of the subsidy. In addition, any remaining budget will be disbursed equally among all the beneficiaries based on their electricity consumption. This remaining share of the subsidy is only paid out to the extent the beneficiary does not, in total, receive aid exceeding 85 % of the actual RES expenditure of that year. If, at the end of the year, a beneficiary has received aid exceeding 85 % of the actual RES expenditure that year, the Danish authorities will recover the excess aid.
- (13) The compensation for 2015 will be calculated the same way as for other years. Consequently, due to the lower quantity of electricity eligible for aid in 2015, it is expected that the subsidy per kWh for 2015 can be raised to a higher level than normal. However, only electricity consumed after the entry into force of the scheme will be eligible for aid, and the aid may not exceed 85 % of the actual RES costs incurred after the entry into force of the scheme.
- (14) The support scheme will cover electro-intensive undertakings having production units classified in the sectors having the NACE codes listed in Annex 3 of the EEAG<sup>2</sup>. At present this includes companies within 68 specified sectors, including manufacture of cement, refineries, iron and steel, paper, enzymes, manufacture of industrial gases, glass fibre and stone wool. With regard to calculating the electricity consumption eligible for subsidy, account will be taken of the total electricity consumption of production units classified in sectors listed in Annex 3 of the EEAG. Only the electricity consumption for which the full PSO tariff is paid is eligible for subsidy. Aid is conditional upon the electricity-intensive undertakings entering into an agreement with the Danish Energy Agency ("DEA") to carry out energy-efficiency improvement projects.
- (15) Under the energy-efficiency agreements, the undertaking must commit to:
  - (a) Introducing and applying certified environmental management pursuant to the international standard for energy management, ISO 50001, which requires that the undertaking sets out its own energy policy and targets and that it complies with these. For example, the undertaking must map its energy consumption, carry out ongoing monitoring of its energy consumption, carry out rectifying and preventive measures, motivate its employees to be energy conscious, have internal and external audits, evaluation, etc.
  - (b) Conducting pilot projects and special surveys of its energy consumption agreed with the DEA for the duration of the Agreement. The applicant will enter into discussions with the DEA regarding surveys or projects to be carried out during the duration of the agreement. The aim is to identify

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<sup>2</sup> Guidelines on State aid for environmental protection and energy 2014-2020; OJ C 200 28.06.2014, p.1.

potential, specific and documentable energy-efficiency improvements on the basis of a thorough analysis of the energy consumption of a process or process plant, or an analysis of the overall production and energy systems, focussing on whether the introduction of new production technology or a change of methods can contribute to reducing energy consumption in the long term. The applicant does not need to conduct all the proposed pilot projects but will be obliged to conduct those with the highest energy-saving potential. An external and independent expert will assess the potential and should approve the undertakings' application.

- (c) Completing all energy-saving projects with a specified, simple payback period. Implementing energy management systems like the required ISO 50001 helps undertakings in identifying potential energy-saving projects. Such identified energy-saving projects should be implemented if they have a simple payback period of less than 5 years. An external and independent expert will calculate the pay-back time. An independent auditor will identify the energy saving projects in the undertaking. If the applicant has conducted an energy audit along the lines of Article 8 of the energy-efficiency directive (2012/27/EC), the independent auditor is deemed not to be necessary and the projects identified in the audit report with a simple payback period of less than five years can be used.
- (16) The notified aid scheme includes a "DKK 20 000 threshold" according to which an amount of DKK 20 000 (approximately EUR 2 680) is deducted from the annual aid amount. Hence, aid below this threshold will not be paid out. For aid amounts above the threshold, only the part exceeding DKK 20 000 will be paid out. However, this threshold does not apply to enterprises being part to collective energy-efficiency agreements entered into with the DEA. "Collective agreements" can be made through a trade organization or by a group of undertakings employing a consultant to administer the agreement. Trade organisations are required to administer also agreements for undertakings which are not members of that trade organisation, thus ensuring that no discrimination takes place. Beneficiaries subject to such collective agreements will benefit from the full aid amount without any deduction.
- (17) Denmark has explained that the DKK 20 000 threshold has been introduced in order to keep the administrative costs in the granting authority at a modest level by keeping the number of applications – not the number of applicants/beneficiaries – at the lowest level possible. Denmark considers it important to allow undertakings to pool together to develop their applications and to save administrative costs during the agreement period. All undertakings may therefore choose to enter into a collective agreement and save the threshold of DKK 20 000.
- (18) In order to get the aid, the beneficiaries must apply to the DEA. The DEA will request applicants to submit their relevant NACE code, an ISO 50001 Energy Management certificate and a proposal for pilot projects to carry out in the agreement period. The role of the DEA is to make sure that the applicant indeed belongs to a sector which is listed in Annex 3 to the EEAG and that the applicant fulfils the criteria of having an implemented energy management system and that it will enter into an agreement about energy-efficiency improvements with the DEA.

- (19) If the applicant meets the criteria for support, the applicant may be granted a conditional grant commitment. The commitment will indicate that the undertaking applying for subsidy is eligible for subsidy, from what date the subsidy will be paid, and the conditions and terms of the commitment, including that the commitment is conditional upon the undertaking establishing an agreement about energy-efficiency improvements with the DEA.
- (20) The Danish TSO, Energinet.dk, will be responsible for measuring the undertakings' electricity consumption, disbursing the aid to the beneficiaries and ensuring that over-payment of aid is repaid, in case too much aid has been disbursed.

## **2.2. Duration, granting authority, legal basis and budget**

- (21) The legal basis for the notified measure is the Act on State aid for Electricity-Intensive Companies (Lov nr. 574 af 4. Maj 2015 – "Lov om statstilskud til elintensive virksomheder") and implementing acts (draft order on State subsidies for electricity-intensive undertakings).
- (22) The scheme will enter into force in 2015, and will remain in force until 31 December 2020. Denmark has confirmed that the scheme will not enter into force before it has been approved by the Commission.
- (23) The aid is financed directly through the State budget, and is granted by the Danish TSO, Energinet.dk.
- (24) The Danish authorities have estimated that an annual consumption of approximately 2.6 TWh/year would be eligible for support under the scheme. The annual electricity consumption eligible has been calculated based on the latest available data (from 2012).
- (25) The estimated number of beneficiaries is between 500 and 1000, and the annual budget of the notified measure is DKK 185 million.

## **2.3. Other elements**

### *2.3.1. Transparency*

- (26) The Danish authorities have confirmed that the transparency requirements set out in section 3.2.7 of the EEAG will be complied with. The required information will be provided no later than 1 July 2016, in line with point 106 of the EEAG.

### *2.3.2. Cumulation*

- (27) The Danish authorities have confirmed that the aid granted under the notified measure cannot be cumulated with other types of aid to cover the same eligible costs.

### *2.3.3. No new aid as long as past incompatible aid has not been recovered*

- (28) The Danish authorities committed to suspend any payment of aid under the notified measure to a beneficiary which has benefitted from an earlier unlawful aid that was declared incompatible by a Commission Decision, until that

beneficiary has reimbursed or paid into a blocked account the total amount of unlawful and incompatible aid and the corresponding recovery interest.

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

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

- (29) 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 unless otherwise provided in the TFEU.
- (30) In the case at hand, EIUs are advantaged because they are being compensated for part of the cost of the mandatory PSO-tariff levied on electricity consumers, which is used to finance support to energy from RES.
- (31) The support is financed directly through the State budget, and paid out by the TSO, Energinet.dk to beneficiaries. Beneficiaries have to apply for the subsidy to the DEA. The latter will verify whether the eligibility conditions set out in the law are fulfilled. The aid is therefore financed from State resources and imputable to the State.
- (32) The measure is also selective because only EIUs within certain specific sectors can benefit from it.
- (33) The potential beneficiaries are all energy-intensive undertakings active in sectors listed in Annex 3 to the EEAG. Hence, they are active in sectors in which trade between Member States takes place, cf. point 185 EEAG. The measure is therefore liable to distort competition and affect trade between Member States.

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

- (34) The reduction in the financial burden on EIUs resulting from RES support was notified to the Commission on 2 July 2015. Denmark confirmed that the notified measure will not be implemented before the approval of the Commission. Denmark has therefore complied with its obligations under Article 108 TFEU.

#### **3.3. Compatibility**

- (35) As the scheme compensates EIUs only for the share of the PSO tariff used to finance RES support, the Commission has assessed the notified aid scheme on the basis of the EEAG, and in particular section 3.7.2. (Aid in the form of reductions in the funding of support for energy from renewable sources).
- (36) Points 185-186 of the EEAG provide that the aid should be limited to sectors that are exposed to a risk to their competitive position due to the costs resulting from the funding of support to energy from renewable sources as a function of their electro-intensity and their exposure to international trade. Accordingly, the aid can as a general rule only be granted if the undertaking belongs to the sectors listed in Annex 3 to the EEAG. As the notified scheme is limited to undertakings belonging to sectors listed in Annex 3, this criterion is met.

- (37) In addition, point 187 of the EEAG provides that Member States can impose additional eligibility criteria provided that within the eligible sectors the choice of beneficiaries is made on the basis of objective, non-discriminatory and transparent criteria and that the aid is granted in principle in the same way for all competitors in the same sector if they are in a similar factual situation. Under the notified scheme, the following additional conditions apply:
- (38) Firstly, the beneficiaries must have an agreement with the DEA, under which they commit to certain energy-efficiency improvements, either individually or by signing up to an agreement concluded between the DEA and a sector organisation. The content of such agreements which will be stated in law, comprises the implementation of ISO 50001, the implementation of all energy-saving projects with a simple pay-back period of less than 5 years, and the conduction of certain pilot projects. These elements are further described in recital (15) above.
- (39) As regards the pilot projects, a full list of proposals for pilot projects will be published on the DEA website. The applicant will be obliged to conduct those with the highest energy-saving potential, based on the assessment of an external and independent expert, as part of the application procedure.
- (40) In addition, potential energy-saving projects will be identified in accordance with the procedure described in recital (15) (c) above. The applicant will be obliged to implement all the identified energy-saving projects which have a simple payback period of less than 5 years.
- (41) The criteria for the energy efficiency agreements apply equally to all the beneficiaries. The Commission further notes that the criteria relating to energy management measures take into account the specificities of each beneficiary. In particular the criteria are commensurate to the energy-saving potential as well as to the means of the different beneficiaries so that the criteria apply without discrimination between undertakings in the same factual situation.
- (42) Secondly, the scheme contains a minimum threshold for payment of aid of DKK 20 000 (approximately EUR 2 680), as described in recitals (16) and (17). This threshold applies to all beneficiaries except undertakings being part of a "collective" energy-efficiency agreement (i.e. concluded between the DEA and a sector organisation or a group of undertakings employing a consultant to administer the agreement). Collective agreements are concluded on behalf of undertakings with similar production and therefore similar energy management challenges and similar possibilities for energy-savings. When undertakings enter into collective agreements, the number of contracts to be negotiated and verified will be significantly reduced, thus reducing the administrative burden on the DEA considerably as compared to a system entirely based on individual agreements. Such collective agreements can also reduce the administrative burden for the beneficiaries by negotiating a collective energy-efficiency agreement, instead of bearing the full costs of a series of agreements for each undertaking individually.
- (43) All beneficiaries are free to choose between individual or collective energy efficiency agreements. Trade organisations are required to administer also agreements for undertakings which are not members of that trade organisation, thus ensuring that no discrimination takes place. By introducing a DKK 20 000 threshold for undertakings with individual agreements, and exempting

undertakings with collective agreements from the threshold, the Danish authorities intend to incentivise undertakings to enter into collective agreements, and thereby reduce the administrative costs of the granting authority by limiting the number of applications. The expected number of beneficiaries is between 500 and 1000. Due to the large number of potential beneficiaries, the Commission considers establishing a financial incentive for acting collectively to be reasonable. The Commission acknowledges that the administrative costs of the granting authority resulting from the negotiation and administration of collective agreements are likely to be lower per beneficiary than what is the case for individual agreements. Therefore, due to administrative economy, the differentiation between beneficiaries based on the type of agreement concluded seems logic, objective and non-discriminatory. In this respect, the Commission notes that all beneficiaries may choose between entering into an individual agreement or a collective agreement, and that the possibility of entering into collective agreements may facilitate the participation in the scheme of small and medium sized enterprises, particularly those which would otherwise not receive any aid due to the DKK 20 000 threshold, and at the same time avoid imposing unnecessary administrative burdens on the granting authority.

- (44) Based on the above considerations, the Commission finds that these additional eligibility criteria outlined in recitals (38) to (43) are objective and transparent and do not discriminate between undertakings in a similar factual situation.
  
- (45) Point 188 of the EEAG provides that the aid is considered proportionate if the aid beneficiaries pay at least 15 % of the additional costs without reduction. The system Denmark has established complies with this condition, as the maximum aid granted shall not exceed 85 % of the share of the PSO tariff used to finance the support to energy from RES. In order to ensure compliance with this condition, only a share of the estimated subsidy will be paid out each month. At the closure of each quarter, once the actual RES costs and electricity consumption for the previous quarter are known, the Danish authorities will verify compliance with the 85 % threshold. If aid has been paid out in excess of the 85 % rule, the excess amount will be deducted from the coming month's subsidy. The rules of repayment of excess subsidies would, if deemed necessary, also apply to this instance.
  
- (46) At the end of the year, once the total annual electricity consumption eligible for aid and the total RES expenditure is known, the beneficiaries will receive the remaining share of the subsidy. In addition, any remaining budget will be disbursed equally among all the beneficiaries based on their electricity consumption. This remaining share of the subsidy is only paid out to the extent the beneficiary does not, in total, receive aid exceeding the 85 % threshold. If, at the end of the year, a beneficiary has received aid exceeding 85 % of the actual RES expenditure that year, the Danish authorities will recover the excess aid. Consequently, the Commission finds that the notified measure complies with point 188 of the EEAG.
  
- (47) According to point 192 EEAG, the aid may be granted in the form of a reduction from charges or as a fixed annual compensation amount, or as a combination of the two. Denmark has explained that the aid will be granted as a reduction from charges through compensation from the budget, based on actual electricity consumption. Hence, point 192 EEAG is met.



- (48) Pursuant to Section 3.2.7 of the EEAG, Member States are required to publish certain information related to beneficiaries of aid before 1 July 2016. The Commission takes note of Denmark's commitment to comply with the transparency requirements as of 1 July 2016.

#### **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 on the Functioning of the European Union.

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>.

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Yours faithfully  
For the Commission

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