



EUROPEAN COMMISSION

Brussels, 24.4.2017
C(2017) 2798 final

PUBLIC VERSION

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**Subject: State Aid SA.43140 (2015/NN) – Latvia
Support to renewable energy and CHP.**

Sir,

1. PROCEDURE

- (1) Pursuant to Article 108(3) of the Treaty on the Functioning of the European Union (TFEU), the Latvian authorities notified electronically the above-mentioned measure on 22 September 2015. The Commission requested additional information by letters on 14 December 2015, supplemented on 14 June 2016 and 14 October 2016 and by emails on 19 December 2016 and 17 February 2017. The Latvian authorities submitted the additional information by letters of 7 March 2016, 15 July 2016, 23 November 2016, 27 January 2017 and 23 February 2017.
- (2) The Commission received four formal complaints regarding this measure. The Law firm LAWIN Kļaviņš & Slaidiņš submitted a complaint on 23 March 2011. This complaint was forwarded to the Latvian authorities on 31 October 2011 who replied on 15 December 2011. A second complainant, who has requested his identity to be kept confidential (the "second complainant"), submitted a complaint on 20 December 2013. This complaint was forwarded to the Latvian authorities on 28 May 2014 who replied on 26 June 2014. The CHPP Association of Latvia submitted a complaint on 25 March 2014. This complaint was forwarded to the Latvian authorities on 13 May 2014 who replied on 10 June 2014. The Small Scale Hydropower Association submitted a complaint on 6 September 2016.
- (3) On 21 February 2017, Latvia waived its right under Article 342 TFEU in conjunction with Article 3 of the EC Regulation No 1/1958 to have the decision adopted and notified in Latvian and agreed that the decision be adopted and notified in English.

Edgars Rinkēvičs
Ārlietu Ministrs
K.Valdemāra iela 3,
Rīga LV-1395

2. DESCRIPTION OF THE MEASURE

2.1. Background and objectives of the scheme

- (4) In line with the energy policy of the European Union, the scheme aimed at promoting deployment of Renewable Energy Sources (RES) and high efficiency cogeneration. In particular, the scheme aimed at increasing the share of renewable energy in gross energy final use from 32.6 % in 2005 up to 40 % in 2020.
- (5) The purpose of the scheme was also to help Latvia reach its targets for cogeneration: increase the average efficiency of CHP plants from 68 % up to 80 % - 90 % and reach the potential of 400 MW_{th} of CHP installed capacity.
- (6) The scheme was originally put in place before Latvia's accession to the Union and continued with several amendments until 2012. This decision concerns the aid granted in the period from 1 July 2007 to 31 December 2012. No beneficiary was accepted in the scheme after 31 December 2012. The projects that were accepted in the scheme and granted aid had a maximum of 60 month of time to start operations. The liberalisation of the Latvian electricity market started on 1 July 2007, giving the possibility to consumers to change their electricity trader and entailing the formation of a market price.

2.2 Description of the scheme

- (7) Under the support scheme, the aid is provided as a fixed payment for the electricity sold to the grid under a mandatory procurement mechanism or as fixed payments for electric power capacity installed.
- (8) Support through the scheme is granted to electricity generated from onshore wind turbines, biomass and biogas plants, small hydro power plants (i.e. with installed capacity lower than 5 MW), natural-gas-fired high-efficiency CHP plants as well as high-efficiency CHP plants using renewable energy as fuel. The scheme originally foresaw the possibility of funding solar power generation. However, no plant of this type was realised in Latvia under the scheme.
- (9) Capacity payments are available only to large CHP plants (with installed capacity greater than 20 MW) fuelled by either natural gas or renewable sources. As from 2009, the scheme foresaw also the possibility of capacity payments for some biomass and biogas plants. However, no plant of this type received capacity payments under the scheme. All other technologies are supported under the mandatory procurement mechanism.
- (10) The electricity produced is bought by the public trader at the price determined according to the applicable Cabinet Regulation. Within the framework of the mandatory procurement, the public trader, State-owned JSC “Enerģijas publiskais tirgotājs” (a fully owned subsidiary of JSC “Latvenergo”), purchases electricity from RES generators at a price higher than the market price¹. The expenses of such procurement are covered by all final electricity users in Latvia through a levy on electricity consumption (i.e., with a charge on every kWh of electricity consumed).

¹ The procedure for paying the aid changed as the scheme was amended (see the description below and, for example, recital (26) below).

- (11) From 1 January 2018, the levy financing the scheme will be collected in two complementary ways. A part of the funds will be collected as before with charges proportional to electricity consumption. The remaining part of the levy will be collected as a fixed fee depending on the grid connection voltage level. The voltage categories used for the purpose of paying the levy are the same as those already used by the national regulator for calculating the distribution tariff. This change in the mechanism will not change the total amount of funds collected for the support system. Both parts of the levy will have to be approved by the national regulator.
- (12) In line with the European Union energy policy targets, the Electricity Market Law fixed the target for the share of RES electricity in the Latvian energy system. Support to cogeneration is limited to the maximum heating load demanded. Only highly efficient CHP plants according to the definition in Annex III to Directive 2004/8/EC of the European Parliament and of the Council of 11 February 2004² are supported under the scheme.

2.2.1 Support for RES producers

- (13) Under the mandatory procurement mechanism, RES producers acquired the right to sell the electricity to the electricity public trader at a price calculated according to Cabinet Regulation No 262 of 16 March 2010 “Regulations Regarding the Production of Electricity Using Renewable Energy Sources and the Procedures for the Determination of the Price” (hereafter – Cabinet Regulation No 262). The feed-in-tariff received for the electricity injected into the grid depends on several parameters including: the type of energy source; the generator installed capacity; the number of yearly hours of operation and, for biomass plants and biogas plants with installed electric capacity starting from 2 MW, the market price of natural gas. Feed-in-tariffs for the different technologies are set out in Cabinet Regulation No 262 issued pursuant to the Electricity Market law that entered into force in 2005.
- (14) Support for RES technologies under the mandatory procurement mechanism is granted in full for 10 years and at a reduced rate for a further 10 years. Latvia confirmed that the overall period of support does not exceed the normal depreciation period for this type of assets.
- (15) Starting on 14 March 2009, also biomass and biogas plants with installed capacity above 1 MW may have received support in the form of a guaranteed payment for the installed capacity. These plants could choose whether to receive payments for the electricity produced under the mandatory procurement mechanism or the capacity payments, but could not cumulate the two types of aid. However, no plant of this type received capacity payment under the scheme.
- (16) The remuneration for biogas installations with installed capacity below 2 MW, wind power and small hydropower generators was calculated according to the following formula:

$$C_E = FiT \times c \times d \times s$$

² Directive 2004/8/EC of the European Parliament and of the Council of 11 February 2004 on the promotion of cogeneration based on a useful heat demand in the internal energy market and amending Directive 92/42/EEC (OJ L 52, 21.2.2004, p. 50).

where:

C_E [EUR/MWh] is the energy component paid for the electric power sold under the Mandatory Procurement mechanism;

FiT [EUR/MWh] is the Feed in tariff for the specific technology;

c is a coefficient dependent on the power generation capacity of the plant;

d is a coefficient applied to account for decreased support after 10 years of operation;

s is a coefficient applied to prevent overcompensation and will enter into force on the first day of the month following the adoption of this decision (see also recital (32) below).

- (17) The remuneration for biogas installations with installed capacity from 2 MW and for biomass generators was calculated according to the following formula:

$$C_{E=} \frac{T_g}{9.3} \times D \times c \times s$$

where:

C_E [EUR/MWh] is the energy component paid for the electric power sold under the Mandatory Procurement mechanism;

T_g [EUR/MWh] is the final tariff for the trade of natural gas approved by the Regulator (without value added tax);

D is a technology-specific coefficient (a non-dimensional number);

c is a coefficient dependent on the power generation capacity of the plant;

s is a coefficient applied to prevent overcompensation and will enter into force on the first day of the month following the adoption of this decision (see also recital (32) below).

- (18) Table 1 shows the FiT factor used for calculating the remuneration for biogas plants with installed electric capacity below 2 MW, wind power and small hydropower generators. In order to account for economies of scale, the values in Table 1 were multiplied by a coefficient dependent on the power generation capacity of the plant (see formula in recital (16) above).

Table 1: FiT for the supported RES technologies (biogas plants with installed electric capacity below 2 MW, wind and hydropower)

Technology	FiT (EUR/MWh)
Onshore Wind with installed electric capacity up to 0.25 MW	147
Onshore Wind with installed electric capacity above 0.25 MW	120
Small scale hydropower	159
Biogas with installed electric capacity below 2 MW	188

- (19) Table 2 show the value of the D coefficient (see formula in recital (17) above) for biomass and large biogas plants.

Table 2: D coefficient for biomass and biogas with installed electric capacity from 2 MW

Technology	D
Biomass with installed electric capacity up to 4 MW	4.5*
Biomass with installed electric capacity above 4 MW	3.6**
Biogas with installed electric capacity from 2 MW	4.5*

* reduced to 3.4 after 10 years of operation

** reduced to 3 after 10 years of operation.

- (20) Table 3 shows the value of the *c* coefficient applied in both formulae above (see recitals (16) and (17) above).

Table 3: Correction coefficient to account for the installed power

Electric capacity installed in the power station	Value of <i>c</i> coefficient
Up to 0.08 MW	1.240
Between 0.08 MW. and 0.15 MW	1.231
Between 0.15 MW. and 0.20 MW	1.202
Between 0.20 MW. and 0.40 MW	1.131
Between 0.40 MW. and 0.60 MW	1.086
Between 0.60 MW. and 0.80 MW	1.072
Between 0.80 MW. and 1.00 MW	1.055
Between 1.00 MW. and 1.50 MW	1.035
Between 1.50 MW. and 2.00 MW	1.008
Between 2.00 MW. and 2.50 MW	0.992
Between 2.50 MW. and 3.00 MW	0.982
Between 3.00 MW. and 3.50 MW	0.974
Between 3.50 MW. and 10.00 MW	0.965
Between 10.00 MW. and 20.00 MW	0.950
Between 20.00 MW. and 40.00 MW	0.920

Between 40.00 MW. and 60.00 MW	0.890
Between 60.00 MW. and 80.00 MW	0.860
Between 80.00 MW. and 100.00 MW	0.830
Above 100.00 MW	0.800

- (21) Starting from 1 April 2010 (and until closure of the scheme in 2012), support for all technologies was granted by means of tender procedures.

2.2.2 Support for CHP producers

- (22) High-efficiency CHP plants (powered by either natural gas or renewable energy) were eligible for support under the mandatory procurement framework pursuant to Cabinet Regulation No.221 of 10 March 2009 “Regulations Regarding Electricity Production and Price Determination upon Production of Electricity in Cogeneration” (hereafter – Cabinet Regulation No.221). Starting from 16 August 2013, by means of Cabinet Regulation No.466 of 30 July 2013 “Amendments to Cabinet Regulation No.221 of 10 March 2009 “Regulations Regarding Electricity Production and Price Determination upon Production of Electricity in Cogeneration” Latvia introduced changes to the mandatory procurement mechanism to promote market integration of CHP plants.
- (23) The remuneration for high-efficient CHP plants with capacity that does not exceed 4 MW was calculated according to the following formula:

$$C_E = \frac{T_g}{9.3} \times D \times c \times s$$

where:

C_E [EUR/MWh] is the energy component paid for the electric power sold under the Mandatory Procurement mechanism;

T_g [EUR/MWh] is the final tariff for the trade of natural gas approved by the Regulator;

D is a technology-specific coefficient (a non-dimensional number) – for RES-CHP plants equal to 4.5, and for fossil CHP plants equal to 3.4;

c is a coefficient dependent on the power generation capacity of the plant;

s is a coefficient applied to prevent overcompensation and will enter into force on the first day of the month following the adoption of this decision (see also recital (32) below).

- (24) High-efficient CHP plants with installed power above 20 MW (powered by either renewable energy or natural gas) were also eligible for support under the mandatory procurement framework. From 2007 to 2009, the remuneration for cogeneration plants with installed electric power capacity above 4 MW was set administratively by the national Regulator. From 18 March 2009, these cogeneration plants could choose to receive support under the mandatory procurement mechanism or support in the form of a guaranteed payment for the installed capacity (see recital (9) above).

- (25) From 31 December 2009 till 15 August 2013 remuneration under the mandatory procurement mechanism for these large cogeneration plants consisted of a subsidy paid for the electricity generated calculated according to the below formula:

$$C_E = \frac{T_g}{9.3} \times 1.2 + CO_2 \times 0.17,$$

Where:

C_E [EUR/MWh] is the energy component paid for the electric power sold under the Mandatory Procurement mechanism.

T_g [EUR/MWh] is the final tariff for the trade of natural gas approved by the Regulator (without value added tax).

CO_2 [EUR/tonne] is the average price of European emissions allowances for the period under consideration.

- (26) As of 16 August 2013, electricity produced by CHP plants with installed capacity above 4 MW is sold at market price and support is paid as a premium on top of the market price. The premium is set administratively by the Regulator.
- (27) CHP plants receiving fixed capacity payments are required to operate a minimum amount of hours in order to be entitled to the payment. All CHP plants receiving support in the form of a guaranteed payment are required to generate for at least 3 000 hours per year.
- (28) For CHP plants with capacity that does not exceed 4 MW, the duration of the aid is 10 years. The duration of the aid for supported CHP plants with capacity higher than 4 MW is 15 years. The support is constant throughout the period and is not reduced. This period does not exceed the normal depreciation period for this type of asset.
- (29) The capacity payment for CHP plants using solid fuel was originally set at EUR 224 459 per MW installed, per year, and for CHP plants using natural gas or liquid fuel at EUR 136 186 per MW installed, per year.

2.2.3 *The Subsidised Electricity Tax*

- (30) According to Latvia, the scheme originally implemented in 2005 risked overcompensating several types of technologies. In the period between 2007 and 2013³, the possibility to cumulate national support with European structural funds increased the risk of overcompensation. According to a report commissioned by the Latvian authorities in 2013⁴ there existed a considerable risk of overcompensation for hydro power, biomass, biogas and some kinds of CHP plants.
- (31) To deal with the alleged overcompensation and to limit the costs of the support to renewables and CHP, from 1 January 2014 Latvia introduced the Subsidised Electricity Tax (SET). Pursuant to the Subsidised Electricity Tax Law, the tax applies to all beneficiaries of the scheme and relates to payments provided under it until 31 December 2017. In particular, the SET applies three differentiated rates: 15 % of the income from

³ As explained in recital (6) above, some plants were not commissioned before 2012 and could still apply for support from structural funds in 2013.

⁴ The report was commissioned by the Ministry of Economics to the consultant Ekodoma and is available at: https://www.em.gov.lv/files/energetika/SIA_Ekodoma_ataskaite.pdf.

electricity sold within the mandatory procurement framework for natural gas CHP plants; 10 % for RES plants and 5 % for CHP plants providing thermal energy to district heating networks.

- (32) In order to reduce any residual risk of overcompensation, the Latvian authorities decided to cap within 1 month of this decision the Internal Rate of Return (IRR) for beneficiaries of the scheme at 9 %. As of the first month following the adoption of this decision, for each beneficiary, the price paid for the subsidised electricity will therefore be reduced to the amount necessary to reach a 9 % overall IRR (see the formulas in recitals (16) and (17) above). Any additional investment aid received (e.g. from European structural funds) will be taken into account when calculating the plant's IRR. This measure will enter into force on the first day of the month following the adoption of this decision and will be applied until support ends.
- (33) A similar mechanism was developed for some special types of CHP plants⁵ selling their output under a regulated price regime. These plants sell their output to district heating networks at a regulated tariff. The tariff is calculated by the regulator in order to keep the plant's IRR at 9 %.

2.3 Beneficiaries

- (34) Beneficiaries of the scheme are electricity generators using renewable energy sources or highly efficient cogeneration plants. Beneficiaries must meet the conditions for receiving the fixed remuneration per kWh of electricity generated or the fixed payment per installed capacity (as described in Sections 2.2.1 and 2.2.2 above).
- (35) As stipulated by Cabinet Regulation No. 604 of 28 August 2012, no more beneficiaries are accepted for receiving aid under the mandatory procurement and capacity payment mechanisms after 2012. However, (as described in recital (6) above) commissioning of power stations having been granted the right to sell electricity within the scope of the mandatory procurement continues and will be completed in 2017.
- (36) For this reason, in the period from 1 January 2013 to 1 January 2014, 33 plants have started to sell electricity within the mandatory procurement framework or to receive the guaranteed payment for the installed electric capacity.
- (37) Table 1: FiT for the supported RES technologies (biogas plants with installed electric capacity below 2 MW, wind and hydropower) Table 4 shows the number of undertakings receiving support under the scheme.

Table 4: number of beneficiaries receiving aid in 2012, 2013 and 2014

Type of the station	Stations which were receiving aid in 2012	Stations which started receiving aid in 2013	Stations which started receiving aid in 2014
Gas CHP plants below 4 MW	77	12	6
Gas CHP plants above 4 MW	4	0*	0
Biogas CHP plants	38	15	3

⁵ These plants are the only exception to the cap described in recital (32) above.

Type of the station	Stations which were receiving aid in 2012	Stations which started receiving aid in 2013	Stations which started receiving aid in 2014
Biomass CHP plants	17	8	8
Wind power plants	53	0	0
Hydroelectric power plants	146	0	2

* Two of the existing stations installed 202.3 MW of additional capacity in 2013.

- (38) Latvia issued in total 490 valid licenses. Of those, 387 projects have been already commissioned and are receiving operating aid. The remaining 103 projects have already been granted aid, but have not started operations yet. The projects entitled to receive aid are required to start operation by the 8 August 2018.
- (39) There is only one CHP plant receiving only the capacity payment (“Fortum Latvia” Ltd.). With an installed electric power of 23 MW, the plant was launched on 24 September 2013. It operated 4 598 hours in 2014 and 4 542 hours in 2015.
- (40) There are 4 CHP plants with installed electric capacity above 4 MW, connected to the transmission network, receiving operating aid under the mandatory procurement mechanism. Table 5 shows the name and installed capacity of the 4 plants.

Table 5: CHP plants with installed electric capacity above 4 MW benefitting of aid under the mandatory procurement mechanism.

Plant name	Installed Capacity
JSC “Latvenergo” TEC-1	114.0 MW
JSC “Latvenergo” TEC-2	832.3 MW
JSC “Rīgas siltums” “Imanta”	48.0 MW
LLC “Juglas jauda”	14.9 MW

- (41) The JSC “Latvenergo” TEC-1 plant started receiving aid in June 2007. The capacity of the JSC “Latvenergo” TEC-2 plant (hereafter "the TEC-2 plant") was expanded in 3 steps: on 28 May 2007, on 30 December 2008 and on 13 September 2010. For each step additional aid was granted. Support to TEC-2 CHP plant is not part of this notification and Latvia committed to notifying it separately.

2.4 Financing and budget

- (42) Table 6 shows, for recent years, the electricity production, total revenues and aid (above the market price of electricity) for different RES and CHP technologies. Latvia estimates that the total support costs (up to 2037) will amount to 3.96 billion EUR.

Table 6: expenditure of the scheme in selected years.

	2011			2012			2013			2014		
	Produced amount of electricity, MWh	Amount paid to producers, m. EUR	Support paid to producers (above the electricity market price), m. EUR	Produced amount of electricity, MWh	Amount paid to producers, m. EUR	Support paid to producers (above the electricity market price), m. EUR	Produced amount of electricity, MWh	Amount paid to producers, m. EUR	Support paid to producers (above the electricity market price), m. EUR	Produced amount of electricity, MWh	Amount paid to producers, m. EUR	Support paid to producers (above the electricity market price), m. EUR
RES	243 059	38.48	26.79	450 897	77.25	56.21	613 558	104.29	73.98	685 257	116.73	83.07
<i>Biogas</i>	100 976	18.48	13.63	101 336	41.73	31.73	281 855	53.35	39.25	335 539	62.39	45.64
<i>Biomass</i>	9 458	1.57	1.12	57 551	10.68	7.99	163 088	28.56	20.42	195 292	32.92	23.24
<i>Wind (on shore)</i>	69 877	7.04	3.69	101 336	10.79	6.07	109 570	11.71	6.46	87 786	9.42	5.36
<i>Small-scale hydro-power (till 5 MW)</i>	62 877	11.38	8.36	77 675	14.05	10.42	59 044	10.67	7.85	66 641	12.00	8.83
CHP (fossil energy sources)	2 600 580	212.27	87.20	1 811 799	217.41	132.85	1 996 127	236.99	135.92	598 329	79.23	49.72
Capacity payment (CHP RES)			0			0			1.29			5.16
Capacity payment (CHP fossil energy sources)	-		0	-		0	-		0	-		107.78
Total	2 843 639	250.75	113.99	2 262 696	294.66	189.06	2 609 685	342.57	211.19	1 283 586	308.90	245.73

- (43) Before 2014, the mandatory procurement mechanism was managed by Latvia's public trader JSC "Latvenergo" (a State controlled company). In 2014, in order to increase transparency the administration of the scheme (for both the mandatory procurement and capacity payments) was transferred to the newly created entity JSC "Energijas publiskais tirgotājs", a fully owned subsidiary of JSC "Latvenergo".
- (44) Final consumers finance the scheme through a levy on electricity consumption, which will be complemented, from 1 January 2018, by a fixed charge on grid connection (see recital (11) above).

2.5 Transparency and Cumulation

- (45) Aid from the scheme could be cumulated with support from European structural funds. The Latvian authorities committed to deducting any investment aid from the operating aid in order to cap the beneficiaries' IRR to 9 % (see recital (32) above).
- (46) Latvia published on the internet details of the projects supported under the scheme.⁶

2.6 National regulatory framework

- (47) The national legal basis for the measure is the Electricity Market Law which entered into force on 8 June 2005. Pursuant to this law, Cabinet Regulation No 503 of 24 July 2007 "Regulations Regarding Electricity Production from Renewable Energy Sources" was enacted. Subsequently this regulation was replaced by Cabinet Regulation No 198 of 24 February 2009 "Regulations Regarding the Production of Electricity Using Renewable Energy Sources and the Procedures for the Determination of the Price" which subsequently was replaced by Cabinet Regulation No 262 of 16 March 2010. In addition, Cabinet Regulation No 921 of 6 November 2006 was enacted for the support to CHP. This regulation subsequently was replaced by Cabinet Regulation No 221.

2.7 Complaints

- (48) Several parties submitted formal complaints to the European Commission claiming that the measure caused undue distortion to competition in the internal market.
- (49) The Law firm LAWIN Kļaviņš & Slaidiņš submitted a complaint on behalf of clients that requested that their identity be kept confidential. The complainants claim that the mandatory procurement and the capacity payments constitute State aid within the meaning of Article 107(1) TFEU. Moreover, the complainants claim that there is no objective need for the TEC-2 CHP plant (see recital (41) above) in order to fully ensure Latvia's total electricity consumption. Therefore, support to this plant will result to be disproportionately expensive for the final electricity consumers financing the scheme.
- (50) The second complainant claims that the measure introduced by Latvia constitutes aid within the meaning of Article 107(1) of TFEU. In particular, the second complainant claims that the amendments introduced to reduce overcompensation (see recital (31) above) disproportionately affect RES producers while having hardly any impact on electric power production from fossil fuels. In particular, the complainant notes that under the new law, large cogeneration producers will pay the 15 % Subsidised Electricity Tax on guaranteed capacity payment, but will pay no additional tax on the sale of electric

⁶ Available on the web page: http://www.fm.gov.lv/lv/finansu_ministrija/.

power. On the other hand, all other producers of electric power (cogeneration stations with installed electric capacity below 4 MW or renewable electric power producers) will pay the SET on all income received from the sale of electricity under the mandatory procurement (that is, both on the part corresponding to the market price of electricity and on the subsidy paid in excess of the market price).

- (51) The CHPP Association of Latvia also submitted a formal complaint on behalf of small CHP generators (with installed capacity below 4 MW). According to the CHPP Association of Latvia, due to the different tax rates under the SET, small CHP producers will bear a disproportioned amount of the retroactive cuts imposed. However, small CHP plants are responsible only for a small fraction of the policy costs. Rather, large plants such as the TEC-2 plant receive a much larger share of the total support.
- (52) The Small Scale Hydropower Association also complained about the retroactive changes implemented by Latvia. In particular, the Association claims that the calculation about the projects' IRR is based on a standardised approach without taking into consideration the specific characteristics of hydropower in Latvia. According to the complainant this approach is not in line with the principle of limiting overcompensation for actual beneficiaries.
- (53) The Latvian authorities replied to the complainants' claims. According to Latvia the original support mechanism was not sustainable and led to concerns about possible undue increase in the price of electricity. For this reason, Latvia tried to develop a more stable and sustainable policy framework. The aim was to design a support mechanism whose cost could be predicted. Having evaluated the profitability of the projects, Latvia is convinced that the introduction of the SET had no significant impact on the deployment of RES and CHP capacity, because revenue from the scheme still covers the extra investment costs.

2.8 Discrimination of imported electricity

- (54) As part of the State aid notification, the Latvian authorities evaluated possible discrimination against imported electricity, since, while the financing for the scheme is levied also on imported electricity, it is used to finance only domestic production.
- (55) The amount of levy imposed on the imported green electricity consumed in Latvia has been approximated as the average share of imports for consumption in Latvia from the neighbouring Member States (Estonia and Lithuania) multiplied by the renewable electricity share in total electricity production in each of the respective neighbouring Member States (according to Eurostat Shares and National RES Action plans) for the corresponding years. Latvia established the exact amount of physical imports and divided them among Estonia and Lithuania based on the flow data of the interconnectors with those countries. The estimated potential discrimination amount has thus been established at about EUR 56.1 million for the whole support period.
- (56) According to Latvia, it is more difficult to estimate an equivalent figure for the amount of imported electricity generated from CHP, given that separate statistics for the amount of CHP powered by RES are not readily available. While it is possible to estimate the amount of electricity generated by CHP in Lithuania and Estonia, a share of it is powered by RES, which leads to double counting. However, Latvia considers EUR 80 million to be a maximum possible estimate for the potential discrimination amount including both RES and CHP (even with double counting of electricity generated from RES in CHP).

- (57) In order to remedy any potential discrimination, Latvia committed to investing the above-mentioned amount in projects favouring foreign producers in the form of an increased potential for importing foreign electricity.
- (58) Latvia explained that in order to promote imports, it is a vital technical precondition to synchronize the Baltic power network with the rest of Europe. The synchronisation of the Baltic States electricity networks with continental Europe will contribute to achieving a fully functioning and connected internal energy market and to increasing energy security in the Baltic States. This long-term project will include a list of cross-border interconnections and the strengthening of the internal lines.
- (59) Together with other Baltic States and the European Commission, Latvia is currently identifying most cost-efficient and timely solutions for the synchronization project. The list of investments considered necessary for implementing the synchronization amount to approximately EUR 310 million.

3. ASSESSMENT OF THE MEASURE:

3.1 Existence of aid

- (60) A measure constitutes State aid within the meaning of Article 107(1) TFEU if it is "*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.*"
- (61) The support scheme confers a selective advantage to the producers of electricity from renewable sources and cogeneration because the support in the form of feed-in tariffs and/or a fixed payment to the installed capacity guarantees them a price for their electricity that is higher than the market price.
- (62) The electricity market in Latvia has been liberalised in 2007 (see recital (6) above) 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. The electricity produced by the beneficiaries is generally sold on the spot market where it enters in competition with other sources of electricity. The Latvian spot market is interconnected with other markets and in particular with the Nord Pool spot market.
- (63) The financing of the support scheme is imputable to the State, as it is established by law and implementing decrees. In addition, it is the State (through the Ministry of Economics) that grants the entitlements, establishes the levy financing the scheme (as described in point (11) above) and monitors the correct implementation through the controlled entities Latvenergo and, since 2014, Latvenergo's subsidiary JSC "Enerģijas publiskais tirgotājs" (see recitals (7) and (44) above). As submitted by Latvia, the State can exert direct control on the entities managing the scheme.
- (64) For advantages to be 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"⁷. 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.⁸

- (65) For those reasons, the Commission concludes that the support to renewable sources and cogeneration under the Electricity Market Law is financed through State resources, confers a selective advantage to producers of electricity from renewable sources and cogeneration in Latvia and is liable to distort competition on the electricity market and affect trade between Member States. Therefore the scheme entails State aid and the Commission needs to examine its compatibility.

3.2 Legality

- (66) By implementing the measure as of 2007, the Latvian authorities have put the aid measure into effect before a final Commission decision. Thus, Latvia has breached the stand-still obligation set out in Article 108(3) TFEU.

3.3 Compatibility of the aid

- (67) Considering the environmental objective of the scheme (promoting the generation of electricity from renewable sources and cogeneration), the Commission has assessed the compatibility of the measure according to Article 107(3)(c) TFEU and in the light of the applicable environmental aid guidelines.
- (68) Considering that the aid was granted during the period covering the applicability of different Guidelines (see recital (6) above), the Commission will assess the measure pursuant to:
- a) the 2001 Community Guidelines on State aid for environmental protection⁹ ("2001 EAG") from 2007 to April 2008; and
 - b) the 2008 Community Guidelines on State aid for environmental protection¹⁰ ("2008 EAG") as from 2 April 2008.
- (69) The measure notified by Latvia covers the aid granted from 2007 to 2012 (see recital (6) above). Therefore this decision concerns only aid granted between 1 July 2007 and 31 December 2012. As described in recital (38) above, some of the plants that have received a valid licence before 31 December 2012 have not yet started operations. The Commission considers that aid for such plants has already been legally granted.

⁷ Case 76/78 *Steinike & Weinlig v Germany* [1977] ECR 595, paragraph 21; Case C-379/98 *PreussenElektra* ECLI:EU:C:2001:160, paragraph 58; Case C-677/11 *Doux Elevage and Cooperative agricole UKL-ARREE* ECLI:EU:C:2013:348, paragraph 26; Case C-262/12 *Vent de Colère* ECLI:EU:C:2013:851, paragraph 20.

⁸ Case C-677/11 *Doux Elevage* ECLI:EU:C:2013:348, paragraph 34; Case T-139/09 *France v Commission* ECLI:EU:T:2012:496, paragraph 36, Case C-262/12 *Vent de Colère* ECLI:EU:C:2013:851, paragraph 21.

⁹ Community Guidelines on State aid for environmental protection (OJ C 37 of 3.2.2001, p.3).

¹⁰ Community Guidelines on State aid for environmental protection (OJ C82 of 01.04.2008, p. 1).

3.3.1 Compatibility of the measure under the 2001 EAG

- (70) 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. The 2001 EAG stipulates that operating aid to cogeneration may be granted in accordance with the rules in points 58 to 65.
- (71) According to point 59 of the 2001 EAG, operating aid for the production of energy from cogeneration or renewable sources can be granted to cover the difference between the cost of producing energy from cogeneration or renewable sources and the market price of the form of energy concerned. The aid can only be granted until the plant has been fully depreciated and can include a fair return on capital. Any investment aid should be taken into account.
- (72) Latvia submitted calculations of the business case for typical installations of the technologies supported by the measure (see Table 1 for the type of RES technologies supported). The calculations show that without the aid, all types of RES and CHP plants would not be profitable.
- (73) Based on the evidence provided, the Commission concludes that the beneficiaries would not have undertaken their investments due to the higher costs of renewable and CHP plants. Therefore the Commission concludes that the aid was necessary and changed the behaviour of the beneficiaries, allowing them to invest in renewable energy and cogeneration.
- (74) In particular Latvia submitted estimates of the cash flows for the TEC-1 plant. Estimates show that the SET contribution should limit the plant's IRR to 8.6 %.
- (75) However, Latvia identified instances of possible overcompensation for some categories of beneficiaries. Latvia already introduced two transitory measures to remedy the problem. Plants receiving the aid will be subject to the SET until 2017 (see recitals (30) to (33) above). After 2017, in case the SET was not sufficient to eliminate the risk of overcompensation, the price paid for electricity will be reduced in order to cap the IRR at 9 % (see recital (32) above).
- (76) The calculations provided thus demonstrate that, as per point 56 of the 2001 EAG, aid is limited to compensate the difference between the cost of producing electricity from renewable energy and cogeneration and the applicable market price of electricity (as explained in recital (6) above, the electricity market was liberalised in 2007 with the formation of a market price). Furthermore, the abovementioned expected rate of return is reasonable and in line with the rate of return expected for projects in this sector.¹¹ Therefore, the Commission considers that the aid is proportionate and the scheme complies with the conditions of the 2001 EAG.
- (77) Latvia has also confirmed that any cumulation with any other form of support is taken into account when calculating the plants' IRRs (see recital (32) above). The Commission thus considers that the rules on potential cumulation of investment and operating aid as set by the second paragraph of point 59 of the 2001 EAG are complied with.

¹¹ See, for example, decision on Case SA.36023 (2014/NN) Estonia – Support scheme for electricity produced from renewable sources and efficient co-generation (OJ C44, 6.2.2015, p. 1).

- (78) The aid granted under the scheme is provided for 20 years as of the start of operation and, in line with point 59 of the 2001 EAG, Latvia has confirmed that this will not exceed the normal depreciation period of the supported installations (see recital (14) above).

3.3.2 Compatibility of the measure under the 2008 EAG

- (79) 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.
- (80) Latvia confirmed that the operating aid for cogeneration was granted to undertakings generating and selling electricity and heat to the public, where the electricity production costs exceeded the relevant market price. 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.
- (81) Latvia confirmed that aid has only been granted to energy from renewable sources and cogeneration as defined by point 70(5) and 70(10) of the 2008 EAG respectively. 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 cogeneration) and the market price of the energy concerned. This is essentially the test which was also applicable under the 2001 EAG.
- (82) As explained in recital (72) above, the calculations provided by Latvia showed that the production costs of electricity from renewable energy sources have been higher than the electricity market price, as required by point 142 of the 2008 EAG. Hence, without the notified aid, there would have been an insufficient incentive to invest in renewable energy sources or cogenerations as such activity would not have been economically viable. The aid was therefore necessary and changed the beneficiaries' behaviour.
- (83) Based on the detailed cost calculations submitted by Latvia to determine the extra production costs for different types of renewable energy and cogeneration technologies, the Commission considers that the scheme complied with points 109 a) and b) of the 2008 EAG. In compliance with point 109 b), Latvia confirmed that any investment aid granted is taken into account when determining the production costs of electricity.
- (84) Latvia confirmed that aid to the TEC-2 cogeneration plant is not part of the present notification since the resulting installed capacity exceeds the 200 MW individual notification threshold for cogeneration plants (see point 160 (b) (v) of the 2008 EAG). Latvia has committed to notifying such aid separately (see recital (41) above).
- (85) Based on these considerations, the Commission concludes that the aid is proportionate and the scheme complies also with the conditions of the 2008 EAG.

3.3.3 Conclusion on compatibility

- (86) The Commission therefore finds that the notified aid scheme for renewable energy and cogeneration is in line with the requirements of respectively the 2001 EAG and the 2008 EAG and, hence, it is compatible with the internal market pursuant to Article 107(3)(c) TFEU.

3.4 Compatibility with other Treaty provisions

- (87) Since the scheme has the aim of supporting generation of electricity from renewable sources and cogeneration and is financed through a levy on domestic electricity consumption, the Commission has examined its compliance with Articles 30 and 110 of the Treaty.¹²
- (88) According to the case-law, 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. Depending on the kind of advantage provided, any such charge might constitute a violation of Article 30 or 110 of the Treaty¹³.
- (89) The aid scheme subject to the present notification is financed through a levy paid by electricity consumers. The tariff is currently levied on all electricity consumption which may therefore also cover electricity imported from other EEA States. The Commission is therefore concerned that the financing mechanism could entail discrimination against imports within the meaning of Articles 30 or 110 of the Treaty.
- (90) Latvia explained that before 2007, the domestic electricity market was closed to competition; therefore the levy could not have been imposed on imported electricity. Moreover, starting on 1 January 2018, part of the levy will be collected as a fixed fee depending on the grid connection voltage level (see recital (11) above).
- (91) Taking into account the reasons above, the Commission considers that no discrimination within the meaning of Articles 30 or 110 TFEU could have taken place in Latvia before 2007 as a result of the levy, which was imposed only on national electricity consumption.¹⁴
- (92) Moreover, being independent of the amount of electricity consumed, the part of the levy that will be imposed on grid connection cannot be seen as discriminating between domestic and imported electricity. However, the Commission concludes that the risk of discrimination remains for the levy collected between 2007 and 2018 and for the part charged on electricity consumption after 2018.
- (93) As any potential discrimination takes place only for electricity consumed in Latvia, the Commission accepts that transit electricity can be excluded from the calculation of the amount of electricity discriminated upon. Taking these assumptions into account, the levies from imported and consumed electricity from renewables and cogeneration are estimated to be no higher than EUR 95 million (see recitals (55) and (56) above).
- (94) The Commission thus concludes that in view of the reallocation of part of the levies collected in the past from imported and consumed renewable and cogenerated electricity

¹² See, for example, decision on Case SA.36023 (2014/NN) Estonia – Support scheme for electricity produced from renewable sources and efficient co-generation (OJ C44, 6.2.2015, p. 1).

¹³ See for example, Case SA.38632 (2014/N) Germany – EEG 2014 – Reform of the Renewable Energy Law (OJ C 325, 2.10.2015, p. 1).

¹⁴ See also Case SA.36023 (2014/NN) Estonia – Support scheme for electricity produced from renewable sources and efficient co-generation (OJ C44, 6.2.2015, p. 1).

to investments in the synchronisation projects (as described in recitals (57) to (59) above), the financing of the aid scheme complies with Articles 30 and 110 TFEU.

3.5 Complaints

- (95) In agreement with the complainants, the Commission considers that the scheme for promoting renewable energy and cogeneration constitutes State aid for the reasons laid down in Section 3.1 above.
- (96) The Commission notes that aid to the TEC-2 CHP plants is outside the scope of this decision. As explained in recital (41) above, Latvia committed to notifying aid to the TEC-2 power plant individually.
- (97) Latvia submitted detailed calculations showing that, for all supported technologies, the aid has been capped to the minimum level necessary to achieve the purpose of the aid. On the basis of this information, as explained in Sections 3.3.1 and 3.3.2 above, the Commission concludes that the aid is proportionate, satisfying the compatibility conditions for State aid.
- (98) The Commission recalls that the scope of the State aid assessment consists in verifying if the measures implemented by Member States constitute State aid and, if so, if they are compatible with the Single Market. In this framework, the competence of the Commission is limited to verifying that State interventions do not lead to undue market distortions and that no aid is given above the minimum necessary to reach the stated objectives. Other policy objectives (such as reaching energy policy targets) are outside the scope of State aid analysis (even if they might fall within the competencies of the Commission).
- (99) In particular, Latvia submitted detailed calculation of the profitability of large CHP installations (such as the 114 MW TEC-1 CHP power plant). The business plan of such plants was evaluated according to the same methodology applied to every other technology and subject to the same measures and conditions. The Commission did not find any evidence of overcompensation for the fossil fuels CHP plants supported under the scheme.
- (100) The Commission also notes that an IRR of 9 % is common for government-supported investments in renewable energy and cogeneration. In particular, the Latvian authorities claimed that avoiding any risk of compensation was necessary to guarantee the long-term financial sustainability of the scheme. According to Latvia, the benchmarks used to evaluate the IRR of different types of plants are based on realistic estimates. These estimates include power output, working hours per year and production costs of hydropower.

3.6 Authentic Language

- (101) As set out in recital (3) above, Latvia has waived its right to have the decision adopted and notified in Latvian. The authentic language of this decision will therefore be English.

4. CONCLUSION

The Commission regrets that Latvia put the aid measure in question into effect, in breach of Article 108(3) of the Treaty on the Functioning of the European Union.

However, it has decided, on the basis of the foregoing assessment, 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.

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Stateaidgreffe@ec.europa.eu

Yours faithfully
For the Commission

Margrethe VESTAGER
Member of the Commission