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<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;">PUBLIC VERSION</p> <p>This document is made available for information purposes only.</p>
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Subject: State aid SA.43697 (2015/N) – Poland
Polish support scheme for RES and relief for energy-intensive users
(Ustawa o odnawialnych źródłach energii – aukcyjny system wsparcia OZE oraz ulgi w opłacie OZE dla przedsiębiorstw energochłonnych)

Sir,

1. PROCEDURE

- (1) By electronic notification of 25 November 2015, Poland notified, pursuant to Article 108(3) of the Treaty on the Functioning of the European Union (the 'TFEU'), the above-mentioned measure. In response to the Commission's requests for information Poland provided additional information on 14 March 2016, 29 March 2016, 7 April 2016, 5 May 2016, 7 June 2016, 12 July 2016, 15 July 2016, 6 October 2016, 17 October 2016, 8 November 2016, 1 December 2016, 16 December 2016, 24 January 2017, 16 February 2017, 23 February 2017, 3 March 2017, 10 May 2017, 19 June 2017, 7 July 2017, 13 July 2017, 1 September 2017, 6 October 2017 and 21 November 2017. There were also several meetings and teleconferences organised between the Polish authorities and the representatives of the Commission.

Jego Ekscelencja
Pan Witold WASZCZYKOWSKI
Minister Spraw Zagranicznych
Al. J. Ch. Szucha 23
00-580 Warszawa
POLSKA

- (2) On 12 October 2016, the Commission received market information partially related to the measure; this information was submitted by a producer of energy from renewable energy sources ('RES') and was registered under the case SA.46604 (2016/MI). The Commission received on 12 April 2017 a complaint on the measure, registered under the case SA.48045 (2017/FC). The complaint and the market information are assessed in the present decision.
- (3) By letter dated 15 November 2017, Poland agreed exceptionally to waive its rights deriving from Article 342 TFEU in conjunction with Article 3 of Regulation 1/1958¹ and to have the present decision adopted and notified in English.

2. DESCRIPTION OF THE SCHEME

2.1. Background and objectives of the notified scheme

- (4) Poland notified a support scheme for promoting electricity produced from renewable energy sources ('RES support scheme'), which aims at facilitating the deployment of RES in Poland. The objective of the scheme is to contribute to Poland's achievement of its 2020 energy targets. According to the 2017 Renewable Energy Progress Report² showing progress in Member States towards their 2020 targets the renewable energy share in the gross final energy consumption in 2015 (11.8 %) was above the 2015-2016 indicative trajectory towards the 2020 target. However, according to the Third Report on the State of the Energy Union, the achievement of the target remains challenging as significant additional investments will be needed.
- (5) For installations with a rated output above 500 kW the level of support is to be determined through competitive bidding processes whereby the aid will be granted in the form of a variable premium on top of the market price based on a contract for difference. Installations with a rated output below 500 kW can opt to sell the electricity to an obliged vendor, in this case, the aid will take the form of a feed-in-tariff, or to sell it on the market and opt for the variable premium on top of the market price based on a contract for difference. The level of the feed-in-tariff will be the level determined through the competitive bidding processes.
- (6) Poland has been supporting RES development through its support system for electricity from RES based on certificates of origin (the 'CO system'), authorised by the Commission's decision C(2016) 4944 final in the case SA.37345³. The Polish authorities confirmed that 30 June 2016 was the last date when RES installations could apply to receive the right to certificates of origin for 15 years, therefore as of 1 July 2016 the system is closed to new beneficiaries. In order to incentivise the development of new RES projects, Poland decided to set up a new support system for RES. The current beneficiaries of the CO system will be allowed to apply for the new support system, however when the installations migrate to the auction scheme they cease receiving support under the CO system.

¹ Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385).

² Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Renewable Energy Progress Report, COM(2017) 57, 1.02.2017.

³ SA.37345 Polish certificates of origin system to support renewables and reduction of burdens arising from the renewables certificate obligation for energy intensive users (OJ C 471, 16 December 2016).

- (7) The RES support will be financed from proceeds from RES surcharge on electricity consumption collected by distribution system operators or the Transmission System Operator ('TSO'). As explained in recital (56), the amount of RES surcharge will be determined annually by the regulator. Poland however also notified a measure providing relief for energy-intensive users ('EIUs') from this surcharge. Poland has already in place a support scheme granting partial relief for EIUs from the financing of the CO system. Poland considers it important to have a similar measure in place in relation with the notified RES support scheme in order to preserve the competitiveness of the Polish industry.
- (8) Initially, the Polish authorities notified also a set of measures that they consider as not involving State aid, for reasons of legal certainty. Following discussions with the Commission, it was agreed that certain measures should be considered as a separate notification⁴. They are thus outside the scope of the present decision. These measures concern:
- the mechanism of settlements for prosumers⁵;
 - the mechanism of compulsory off-take of electricity from micro-installations at the average market price of the last quarter, addressed to operators other than prosumers; and
 - the mechanism of compulsory off-take of offered heat generated from RES.

2.2. National legal basis

- (9) Poland indicated as national legal basis for the notified scheme the Act of 20 February 2015 on Renewable Energy⁶ ('the RES Act') with further amendments thereto. Moreover, Poland indicated a list of implementing regulations:
- regulation of the Minister of Energy of 24 November 2016 on the amount and value of electricity from renewable energy sources generated in RES installations located outside the territory of Poland and outside the Polish exclusive economic zone that can be sold in auctions in year 2017;
 - regulation of the Minister of Energy of 17 October 2016 on reference prices of electricity from renewable energy sources in year 2016 and on periods applicable to operators who won auctions in year 2016;
 - regulation of the Council of Ministers of 27 October 2016 on the maximum amount and value of electricity from renewable energy sources to be procured in auctions in year 2016;
 - regulation of the Council of Ministers of 27 October 2016 on the order of auctions for sale of electricity from renewable energy sources in year 2016;

⁴ The measures are being assessed under the State aid case SA.47397(2017/N).

⁵ Defined in the RES Act as a final consumer purchasing electricity under a comprehensive agreement, producing electricity only from renewable energy sources in a micro-installation for consumption for own needs unrelated to the conducted business activity regulated by the Freedom of Business Activity Act of 2 July 2004 (Journal of Laws 2016, items 1829, 1948, 1997 and 2255 and 2017, items 460 and 819).

⁶ Journal of Laws 2015, item 478, as amended.

- regulation of the Minister of Energy of 1 December 2016 on the detailed method of calculating the value of State aid for producers of electricity from renewable energy sources in the installation of renewable energy sources;
 - regulation of the Minister of Energy of 16 March 2017 on reference prices of electricity from renewable energy sources in year 2017 and on periods applicable to operators who won auctions in year 2017;
 - regulation of the Council of Ministers of 20 March 2017 on the maximum amount and value of electricity from renewable energy sources to be procured in auctions in year 2017;
 - regulation of the Council of Ministers of 20 March 2017 on the order of auctions for sale of electricity from renewable energy sources in year 2017;
 - regulation of the Council of Ministers of 29 September 2017 amending the regulation on the order of auctions for sale of electricity from renewable energy sources in year 2017;
 - regulation of the Council of Ministers of 29 September 2017 amending the regulation on the maximum amount and value of electricity from renewable energy sources to be procured in auctions in year 2017.
- (10) Furthermore, by letter of 19 June 2017 Poland informed the Commission about planned amendments to the RES Act, which aim at introducing, among other, modifications to the RES support scheme indicated in the amended notification of the aid measure to the Commission. The legislative process concerning the adoption of proposed amendments to the RES Act is ongoing.

2.3. Beneficiaries, form of aid and functioning of the support system

- (11) For the notified RES support scheme, the beneficiaries are producers of electricity from RES within the meaning of the Directive 2009/28/EC of the European Parliament and of the Council ('RES Directive')⁷.
- (12) According to the RES Act, the notified support system for RES is based on auctions.
- (13) The notified support scheme is addressed primarily to new installations (which started generating electricity after 1 July 2016) in order to increase the share of RES in Poland. Additionally, installations currently receiving support under the CO system will be able to take part in the auction and migrate to the auction system. In such case the total period of support under both systems cannot exceed 15 years - support for existing installations will be granted for a period of 15 years decreased by the number of years in which installation at hand benefited from certificates of origin. Therefore, when the installations migrate to the auction scheme they cease receiving support under the CO system.⁸

⁷ 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).

⁸ Amendments to the CO system are being assessed under a separate case SA.49458 (2017/EO).

Baskets

- (14) Based on Article 72 of the RES Act, the Council of Ministers determines annually (before 31 October each year), by regulation, the maximum amount and value of electricity from RES, which can be sold in auctions in the next calendar year, broken down into⁹:
- existing installations;
 - existing modernized installations (modernized after 1 July 2016);
 - new installations, i.e. installations where electricity is generated for the first time after 1 July 2016;
 - new modernized installations, i.e. installations where electricity is generated for the first time after 1 July 2016, and would later be upgraded.
- (15) Poland introduces separate auctions for new installations, which started operating after 1 July 2016 and existing installations, which started operating before 1 July 2016 and it explained that these auctions serve different purposes. Procurement of electricity from new installations leads to deployment of new RES and directly contributes to EU climate policy objectives. Auctions for existing installations will be organized to allow the compensation of higher costs of the generation of electricity from RES and thus enabling the continuation of such generation.
- (16) Poland explained that the mechanism of auctions for modernized (both new and existing) installations has not been finalized, and requested that these auctions remain outside the scope of the present notification. The Polish authorities informed that in case these auctions are organized, they will be notified separately at a later stage.
- (17) The President of the Energy Regulatory Office (ERO) will conduct separate auctions for the sale of electricity produced by new and existing RES installations.
- (18) By letter of 19 June 2017 Poland informed the Commission about planned amendments to the RES Act concerning the schedule of sales of electricity from RES. The schedule will be published by the Minister of Energy by 31 October each year and it will set the maximum amount and value of electricity from RES which is planned to be procured through the auction in the three consecutive years (cf. Article 72a (2) of the draft law amending the RES Act).
- (19) Under the current design of the auction mechanism, separate auctions will be organized for the following types of RES installations (baskets)¹⁰:
- installations with productivity above 3 504 MWh/MW/year;

⁹ For each of the listed categories of installations the maximum amount and the value of electricity will be determined separately.

¹⁰ Auctions do not have to be organized for all of the following types of installations - the Council of Ministers may decide to allocate the budget and the amount of electricity only to several selected baskets. Poland however also submitted information on the quantities of electricity from different technologies that should be achieved with this support scheme.

- installations using biodegradable municipal and industrial waste for the production of electricity;
 - installations with productivity above 3 504 MWh/MW/year and with CO₂ emission level up to 100 kg/MWh;
 - energy clusters (as defined in Article 2 (15a) of the RES Act);
 - energy cooperatives (as defined in Article 2 (33a) of the RES Act);
 - installations using solely agricultural biogas for the production of electricity;
 - other technologies.
- (20) By the same letter Poland informed the Commission about its planned amendment to remove the productivity threshold of 3 504 MWh/MW/year and the emission threshold of CO₂ up to 100 kg/MWh.
- (21) The Polish authorities also informed the Commission that they intend to remove from the current basket design the baskets for energy clusters and energy cooperatives. Poland considers that the scheme based on auctions is not properly designed to support energy clusters and energy cooperatives. Therefore, support for energy clusters and energy cooperatives should remain outside the scope of the present notification.
- (22) The Polish authorities explained that after the adoption of the proposed amendments, the composition of each basket (cf. Article 73 (3a) of the RES Act) will be defined by reference to RES technologies mentioned in Article 77 (4) of the RES Act for which reference prices are established. The proposed design of baskets, which is covered by the present notification, is the following:
- installations using landfill biogas, biogas from wastewater treatment plants and other biogas (not agricultural biogas), dedicated biomass and hybrid RES installations up to 50 MW, dedicated multi-fuel installations using biomass, bioliquids, biogas or agricultural biogas; dedicated biomass or hybrid high-efficiency CHP of electric capacity up to 50 MW¹¹; dedicated biomass or hybrid high efficiency CHP of electric capacity above 50 MW and heat capacity (in co-generation) up to 150 MWt and installations using only bioliquids;
 - waste incineration plants installations;
 - hydropower, geothermal and offshore wind installations;
 - installations using solely agricultural biogas for the production of electricity;
 - onshore wind and solar installations.

¹¹ A dedicated multi-fuel installation is defined as the multi-fuel combustion installation where the share of biomass, bioliquids, biogas or agricultural biogas, calculated in accordance with energy density, in the total energy density of all combusted fuels used to produce electricity or heat in that installation in the settlement period is higher than 15 %, provided the installation meets the conditions laid down in Article 2 (6) of the RES Act.

- (23) Poland intends to introduce a separate basket addressed to hybrid installations¹² aiming at promoting stable generation of renewable electricity in local communities. Since hybrid installations may consist of installations using different RES technologies, the Polish authorities consider that it would be inappropriate to include them in one auction basket with other specified RES technologies. The Polish authorities noted that the mechanism of auctions for hybrid installations has not been finalized, and therefore requested that these auctions remain outside the scope of the present notification. The Polish authorities informed that in case these auctions are organized, they will be notified separately at a later stage.
- (24) Separate auctions will be held for the installations up to 1 MW and above 1 MW in each of the categories referred above (in line with Article 73 (4) of the RES Act). This division applies thus to both the auction for new installations, which started operating after 1 July 2016 and for existing installations, which started operating before 1 July 2016, migrating from a system based on green certificates. The law does not determine the extent to which the amount and the volume of electricity will be allocated to each of the capacity groups. This allocation will be determined annually by the Council of Ministers.
- (25) Poland justified the introduction of separate baskets for installations with installed capacity of up to 1 MW and above 1 MW by differences in the levelised cost of energy (LCOE) between small installations and larger installations and by the need to deploy installations of smaller scale, with an exception regarding small onshore wind installations as explained in recital (31) (which cannot effectively compete with larger installations, in the same auction, due to their higher LCOE).
- (26) The order in which the auctions are to be held will be determined annually by the Council of Ministers by way of a regulation, taking into account the targets for RES and the potential for national energy resources (cf. Article 73 (7) of the RES Act).
- (27) For each technology listed in recitals (19) and (22) and, if applicable, separately for the installations with installed capacity below or above 1 MW, a reference price will be established. The reference price is defined as the maximum price in PLN per MWh applicable in a particular calendar year, at which RES electricity can be procured in the auction. The reference price will be determined annually by the Minister of Energy, not later than 60 days before the first auction of the year (cf. Article 77 (1) of the RES Act).
- (28) The Polish authorities confirmed that the reference prices will be *de facto* determined based on the levelised cost of electricity (LCOE). Their level is established so as to reflect the LCOE of each technology (for the relevant capacity group), using standard LCOE methodology for 15-years period and with 5 % discount rate (real). Two exceptions have been made when calculating LCOE, notably for geothermal installations, for which a discount rate of 8 % (real) has been assumed and for offshore wind installations, for which a discount rate of 6 % (real) has been assumed. The Polish authorities explained that this is justified firstly by the fact that

¹² Hybrid installation is a set of at least two renewable energy source installations, where none of the installations exceeds 80 % of total installed capacity, using only renewable energy sources and differing in the availability of produced energy in the distribution network with rated voltage lower than 110 kV and with electrical capacity factor higher than 3,504 MWh/year, on the area of activity of such hybrid installation not exceeding the boundaries of a single district.

investments in these RES technologies require high upfront investment expenditures and secondly they are still in the development phase in Poland.

- (29) For the 2016 auctions the reference prices reflected the LCOE for all technologies for which auctions were to be organised, except for onshore wind. For onshore wind Poland introduced an exception from this principle as a lower reference price was established. The Polish authorities justified this exception by the need to channel the support to photovoltaic ('PV') projects, which are essential for the grid stability. Even if both wind and PV are intermittent, PV installations can provide additional electricity during the peak consumption in the summer (determined by the intensive use of air conditioning equipment), when wind is normally not available. Therefore, Poland stated that this lower reference price acted as a volume cap for onshore wind to participate in the auction. Poland explained that the Polish electricity grid is vulnerable during episodes of high consumption and low generation. According to the Polish authorities, in August 2015 the national electricity system was close to a blackout because of a higher than usual consumption due to hot weather leading to a peak on electricity demand for cooling, in a moment in which wind energy was not available. According to the Polish authorities, solar generation of electricity could have helped at the time, but only a small number of solar projects managed to develop under the CO system. Additionally, the Polish authorities explained that currently deployed onshore wind capacity is over four times higher than the next RES technology – biomass. Poland has the objective of achieving a higher diversification of the RES technologies deployed in Poland. As of 2017 onwards Poland has committed not to make any such exceptions.
- (30) Further, to justify the composition of baskets the Polish authorities have presented the situation of RES deployment at the end of September 2016, as well as the RES targets (as they have been originally established in the National Renewable Energy Action Plan ('the NREAP'), and as foreseen at present).

Table 1 – Situation of RES deployment and RES targets according to the National Renewable Energy Action Plan

Installed RES capacity until 2020				
Type of RES	State as of 30 September 2016	Target for year 2020 (NREAP)	Updated target	Missing capacity (MW)
Hydropower plants	990	1 152	1 152	162
Geothermal plants	0	0	100	100
Photovoltaic installations	97	3	1 000	903
Onshore wind	5 778	5 600*	6 000	222
Offshore wind	0	500	500	500
Small onshore wind	5	550	5	0**
Biomass installations	1 273	1 550	1 550	277

Biogas installations	233	980	980	747
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* From 2017 onwards the Polish authorities are planning to organize auctions addressed also to onshore wind (however to a limited extent) since it is foreseen that in the meantime also more stable sources and PV installations will be deployed, securing safe operation of the National Electricity System, also in the summer months.

** Capacity originally foreseen for small onshore wind has been allocated to PV installations taking into account annual productivity.

(31) To justify the updated targets, Poland informed the Commission that:

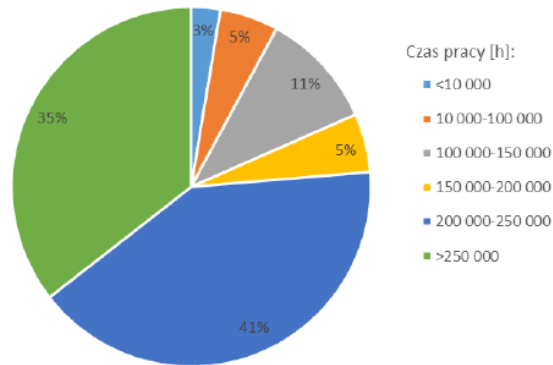
- With the introduction of the new support scheme, the Polish authorities wish to focus on the diversification of RES in Poland with particular emphasis on stable RES technologies. Such approach is justified by the need to ensure safe operation of the national electricity system and at the same time contributes to predictability of long-term policy with respect to RES in Poland.
- Although the NREAP does not foresee deployment of PV installations, the Polish authorities intend to support the deployment of approximately 500 MW of these installations until 2020. In the years 2009-2010, when the NREAP was developed, PV installations were considered as not having a long-term potential due to atmospheric conditions in Poland (translating into low annual productivity) and very high investment costs. However, based on the experience from August 2015, when the national electricity system was under constraint and due to observed unavailability of wind power in summer months, PV installations are now considered a valuable stabilizing factor in terms of security of supply. Additionally, in recent years investment costs of PV installations have significantly decreased.
- With respect to capacity of onshore wind installations (excluding small onshore wind installations) the target has been exceeded already in 2016. In consecutive years, installed capacity of onshore wind farms grew as follows: in 2012 by 880 MW, in year 2013 by 893 MW, in year 2014 by 444 MW, in year 2015 by 745 MW and in the first half of 2016 by 1 078 MW.
- According to the NREAP ca. 500 MW of small onshore wind capacity should be deployed until 2020. However, taking into account the above mentioned impacts on grid stability, the Polish authorities explained that they do not intend to support this type of installations.
- The Polish authorities consider installations using agricultural biogas as contributing to greater diversification of RES technologies in Poland. Furthermore, installations using agricultural biogas make use of locally available resources, as they can generate heat and power from agricultural waste and residues from processing plants; they are likely to bring many benefits for local communities (e.g. a biogas installation with installed capacity of 1 MW directly creates ca. 10 workplaces and another several workplaces indirectly); additional benefits arise from the deployment of biogas installations on site in rural areas where additional investments are most needed.
- The Polish authorities are considering that in the following years geothermal plants and individual offshore wind projects might be supported and have updated their objectives accordingly.

- (32) By letter of 22 February 2017 the TSO confirmed that the baskets are structured in such a way as to enable the right balance between stable and unstable RES technologies to be maintained in terms of their impact on the safety of the national power system and the costs of electricity supply. In view of the TSO, stable RES technologies include above all biomass, biogas and hydropower installations.
- (33) Unlike in the case of stable technologies, the quantity of electricity produced by wind and PV installations depends on the current atmospheric conditions, which determine the variable nature and unpredictability of their power output in the long term. According to the TSO this creates uncertainty as to the possibility and the extent of using these sources to cover the electricity needs in the national power system, in particular at peak times.
- (34) The TSO also pointed out that at the current level of installed capacity of wind installations, there is already a high likelihood of periods of inability to absorb the energy generated by them, owing to a lack of sufficient opportunities to reduce electricity generation from other domestic sources or the limited capacities of transmission networks. The TSO points to the growing difficulties in balancing the national power system at off-peak times, particularly during holiday periods. This results in the increasing number of conventional power plants being turned off at night. The TSO also stressed that when restrictions on the supply and uptake of electricity were introduced in August 2015, the share of wind installations in meeting the demand of the national grid was only around 100 MW, while their installed capacity in the same period totalled over 4 000 MW.
- (35) The TSO states that in summertime the power curve generated by PV installations very nearly matches the power demand curve within the national power system, and naturally fits in with the requirements of the system. The TSO determined that the maximum amount of energy from PV installations that can be fed into the national power system will be [...]GW by 2020.
- (36) Furthermore, by letter of 21 November 2017 the TSO explains that because wind generation is unstable the TSO has to maintain an adequate back-up of conventional sources. In this context, the conventional plants need to have a permissible variation of electricity production by operating plants and they need in principle to be flexible i.e. to be able to be activated frequently. The conventional plants were designed to operate in a continuous mode (within the technical minimum¹³ and the maximum capacity). The TSO clarified that the conventional plants in Poland are old (commissioned between 1960 and 1980) and characterized by a long (ca. 8 hours) activation time. Therefore, due to low operational flexibility of the plants their ability to be used for balancing the unstable RES generation is limited.
- (37) Further, the TSO notes that the fact that a number of key components of the conventional plants have been heavily exploited has an impact on the availability of the plants. The TSO provided data demonstrating that the increase in the number of activations and the time of exploitation of the conventional plants are correlated with the number of technical breakdowns, which in practice results in the reduced availability of the plants because of the need for reparations and maintenance. Many

¹³ The technical minimum is the value of capacity produced in a continuous manner with the minimum energy input required to ensure stable operation of the plant

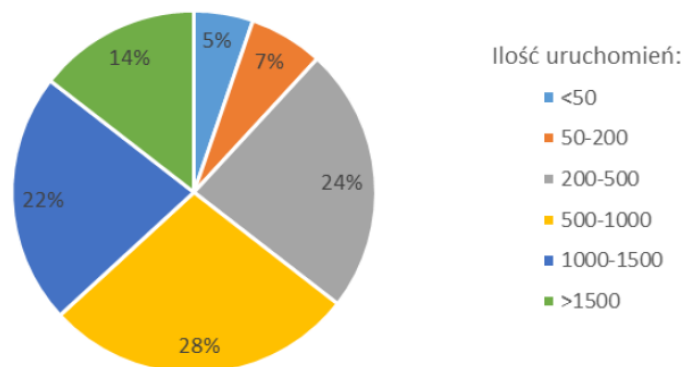
of the plants operated for more than [...] hours and were activated more than [...] times. According to the TSO, the number of technical failures increases after they exceed [...] hours of operation and [...] activations. The figures 1 and 2 below show the number of hours during which the conventional plants operated and the number of times when they were activated.

Figure 1: Conventional plants by number of operated hours



Source: Office of Technical Inspection (UDT)

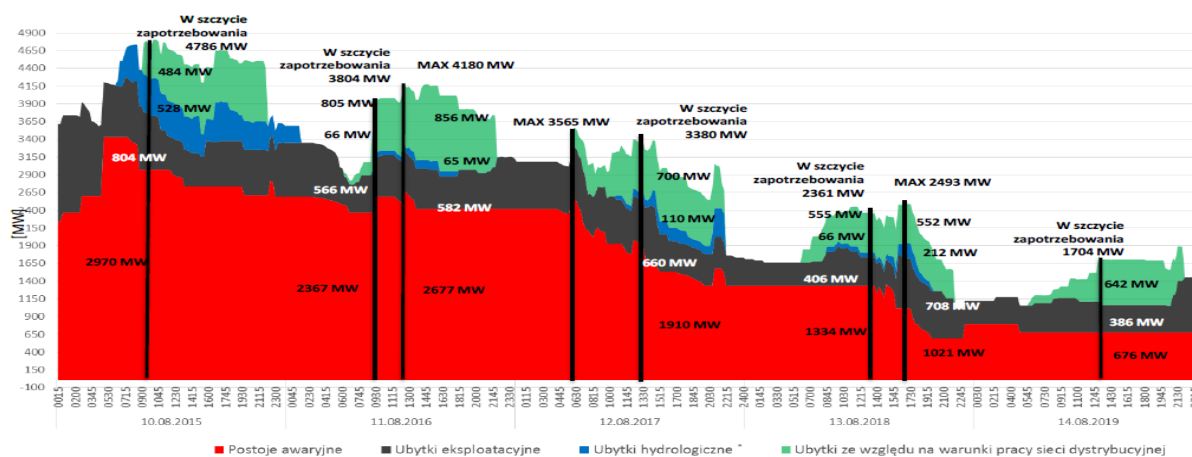
Figure 2: Conventional plants by number of activations



Source: Office of Technical Inspection (UDT)

- (38) The TSO points out that in view of the limited national generation capacity, the decrease in the availability of the conventional plants might significantly jeopardize the security of supply in Poland. This is confirmed by the episode in August 2015, when the generation capacity of conventional plants was reduced due to technical failures (see Figure 3, where the red colour depicts losses in generation capacity caused by technical failures of the generation components). The TSO concludes that, based on the structure and the technical state of the generation plants in Poland, there is a need to maintain an appropriate balance between stable and unstable RES in order to be able to ensure the grid stability.

Figure 3: Losses in generation capacity between 10 and 14 August 2015



Source: Transmission System Operator (PSE S.A.)

- (39) Reference prices will be set for each of the technologies listed in Article 77 (4) of the RES Act. The Polish authorities explained that one RES technology for which reference price is established can be qualified to one technological basket only, as illustrated in Table 2 and Table 3 below.
- (40) The Polish authorities organized first rounds of auctions in December 2016 and in June 2017, as described in recitals (74) - (80). RES technologies were allocated to particular baskets in accordance with the current rules set out in the RES Act, as presented in Table 2 below.

Table 2 - Assignment of RES technologies to particular baskets

	Basket (Article 73 (3a) of the RES Act)	Technologies for which reference price is established (Article 77 (4) of the RES Act)
1	Installations with productivity above 3 504 MWh/MW/year	Dedicated biomass and hybrid RES of capacity up to 50 MW; Dedicated multi-fuel installations using biomass, bioliquids, biogas or agricultural biogas; Dedicated biomass or hybrid high-efficiency CHP of electric capacity up to 50 MW; Dedicated biomass or hybrid high efficiency CHP of electric capacity above 50 MW and heat capacity (in co-generation) up to 150 MWt Installations using landfill biogas for generation of electricity; Installations using biogas from wastewater treatment plants for generation of electricity; Installations using other biogas than mentioned above (and not agricultural biogas) for generation of electricity; Installations using only bioliquids for generation of electricity
2	Installations using biodegradable municipal and industrial waste for the production of electricity	Waste incineration plants
3	Installations with productivity above 3 504 MWh/MW/year and with CO ₂ emission level up to 100 kg/MWh	Hydropower plants of capacity up to 1 MW (with qualified productivity); Hydropower plants of capacity above 1 MW (with qualified productivity)

	Basket (Article 73 (3a) of the RES Act)	Technologies for which reference price is established (Article 77 (4) of the RES Act)
		Offshore wind Geothermal installations
4	Energy clusters	Outside the scope of the present notification
5	Energy cooperatives	Outside the scope of the present notification
6	Installations using solely agricultural biogas for the production of electricity	Installations of capacity up to 1 MW using solely agricultural biogas for the production of electricity Installations of capacity above 1 MW using solely agricultural biogas for the production of electricity
7	Other installations	Onshore wind of capacity up to 1 MW; Onshore wind of capacity above 1 MW; Hydropower plants of capacity up to 1 MW (low productivity); Hydropower plants of capacity above 1 MW (low productivity) PV installations of capacity up to 1 MW; PV installations of capacity above 1 MW; Offshore wind (low productivity); Hybrid RES of capacity up to 1 MW (low productivity); Hybrid RES of capacity above 1 MW (low productivity)

Source: Polish authorities

- (41) Based on the information submitted by the Polish authorities concerning the planned amendments to the RES Act, the allocation of RES technologies to particular baskets in the next rounds of auctions will change as presented in the table below.

Table 3 – Proposed assignment of RES technologies to particular baskets

	Basket (Article 73 (3a) of the RES Act)	Technologies for which reference price is established (Article 77 (4) of the RES Act)
1.	Installations mentioned in Article 77 (4) (3)-(9) and (11)	Installations using landfill biogas for generation of electricity; Installations using biogas from wastewater treatment plants for generation of electricity; Installations using other biogas than mentioned above (and not agricultural biogas) for generation of electricity; Dedicated biomass and hybrid RES of capacity up to 50 MW; Dedicated multi-fuel installations using biomass, bioliquids, biogas or agricultural biogas; Dedicated biomass or hybrid high-efficiency CHP of electric capacity up to 50 MW; Dedicated biomass or hybrid high efficiency CHP of electric capacity above 50 MW and heat capacity (in co-generation) up to 150 MWt Installations using only bioliquids for generation of electricity
2.	Installations mentioned in Article 77 (4) (10)	Waste incineration plants
3.	Installations mentioned in Article 77 (4) (14)-(16) and (19)	Hydropower plants of capacity up to 1 MW; Hydropower plants of capacity above 1 MW; Geothermal installations; Offshore wind
4.	Installations mentioned in Article 77 (4) (1)-(2)	Installations of capacity up to 1 MW using solely agricultural biogas for the production of electricity; Installations of capacity up to 1 MW using solely agricultural biogas for the production of electricity
5.	Installations mentioned in Article 77 (4) (12)-(13) and (16)-(17)	Onshore wind of capacity up to 1 MW; Onshore wind of capacity above 1 MW; PV installations of capacity up to 1 MW; PV installations of capacity above 1 MW;

	Basket (Article 73 (3a) of the RES Act)	Technologies for which reference price is established (Article 77 (4) of the RES Act)
6.	Installations mentioned in Article 77 (4) (20)-(21)	Hybrid RES of capacity up to 1 MW; Hybrid RES of capacity above 1 MW

Source: Polish authorities

- (42) The Polish authorities consider the allocation of RES technologies into the respective baskets necessary. In view of the problems arising in the Polish electricity system, the primary objective of the Polish authorities is to deploy more stable and steerable RES. The Polish authorities consider that the deployment of stable technologies will contribute to ensuring safe operation of the national electricity system.
- (43) Initially, to distinguish between stable and unstable RES technologies, the Polish authorities established a threshold of 3 504 MWh/MW/year, which has been calculated on the level of average productivity of hydropower plants in Poland. The 3 504 MWh/MW/year threshold encompasses hydropower plants which on average have the productivity of ca. 3 600 MWh/MW/year and, as such, are considered by the TSO as stable and steerable RES installations. The threshold of 3 504 MWh/MW/year corresponds to ca. 40 % of the number of hours of electricity generation per year, which would ensure satisfactory level of grid stability.
- (44) Poland informed the Commission that based on experience gathered during the test auctions held in December 2016, the Polish authorities consider that the threshold of 3 504 MWh/MW/year constitutes a condition which is perceived by the investors as unnecessarily restrictive. Additionally, Poland also noted that monitoring of compliance with this condition would require engagement of significant administrative resources. Therefore, pursuant to the planned amendments to the RES Act the threshold of 3 504 MWh/MW/year will be removed.
- (45) The Polish authorities explained that the RES installations mentioned in Article 77(4) points (3) - (9) and (11) are characterized by greater predictability of electricity generation in daily, monthly and annual cycles which contributes to stabilizing the national electricity system. The Polish authorities are planning to incentivize deployment of these RES technologies for reasons of grid stability and to ensure security of supply.
- (46) The Polish authorities have further explained that the stable technologies needed to be split into two different categories based on the level of CO₂ emissions. Due to significantly different LCOEs, including all stable technologies in one basket could bring suboptimal results of auctions. If the basket for stable technologies were not further differentiated based on CO₂ emission level, biomass installations would be in an advantaged position, as the installations using biomass have an LCOE lower than hydropower plants, offshore wind and geothermal installations. For example, in 2016 the LCOEs of installations using hydropower (below and above 1 MW), using offshore wind and using geothermal energy to produce electricity varied from 455 to 480 PLN/MWh while the LCOEs of installations using biomass ranged from 310 to 435 PLN/MWh.
- (47) The Polish authorities argue that a separate basket should be created for waste incineration plants. Poland is concerned that if the waste incineration installations were placed in the same basket with other RES technologies, including biomass technologies, they could outbid them due to their low LCOE of individual plants. For

example, in 2016 the LCOE of a thermal waste processing installation was 385 PLN/MWh, while LCOEs of biomass installations ranged from 310 to 435 PLN/MWh. The Polish authorities point out that waste incineration plants have very low or no fuel costs.

- (48) The Polish authorities acknowledge that there is still a need for deployment of additional thermal waste processing capacity. According to projections provided in the National Waste Management Plan, even when ambitious targets for recycling and preparation for re-use of waste are achieved, there is still a need for deployment of additional thermal waste processing capacity. Uncontrolled deployment of waste incineration plants could undermine the objective of the waste hierarchy which prioritizes the ways in which waste should be treated. Therefore, Poland considers that in order to ensure the respect of the waste hierarchy established in the Waste Framework Directive (which is implemented to the national legislation in Poland) the Polish authorities need to retain full control over deployment of waste incineration plants. The Polish authorities consider that a separate basket would enable them to retain an option to tender some volumes of electricity produced by thermal waste processing installations, while ensuring that no more than 30 % of municipal waste would be treated in such installations. Poland confirmed that no overcapacity of the waste incineration installations will take place.
- (49) A separate basket for agricultural biogas installation was necessary due to their high LCOE, which would have limited their deployment. The Polish authorities consider that the installations using agricultural biogas could contribute to achieving greater diversification of RES technologies in Poland. They also argue that due to high LCOE these installations would not be in a position to compete with other technologies if they were put in one basket. To demonstrate the need for establishing a separate basket for the agricultural biogas installations, the Polish authorities presented calculation of costs for these installations.
- (50) The above arguments are supported by comparing the LCOE of agricultural biogas installations with other relevant RES technologies, in particular biomass. In 2016 the reference price, which is based on the LCOE, for agricultural biogas installations was set at 550 PLN/MWh. This price is significantly higher than the reference prices set for different installations using biomass which varied from 310 to 435 PLN/MWh.
- (51) Poland also recognizes an important role of agricultural biogas installations in stabilizing the national grid. In particular, deployment of local and steerable RES installations which are close to energy consumers will reduce grid constraints. Poland argues that the deployment of biogas installations can improve the energy security in Poland and increase the share of RES energy produced from domestic raw materials. Finally, the deployment of such installations would result in the creation of additional green jobs. The Polish authorities confirmed that there is a significant evidenced potential to deploy biogas capacity of ca. 600 MW.
- (52) In addition to the development of stable RES installations, Poland wishes to deploy a more diversified portfolio of intermittent RES installations. The Polish authorities consider that more balanced deployment of some intermittent RES technologies (such as solar and wind power) is necessary, as these technologies are complementary, therefore if one of the technologies is unavailable the other one could be used.
- (53) As already indicated in recitals (16) and (23), some of the auctions are however outside the scope of the notification, and as a consequence, they are outside the scope

of this decision. The auctions for modernized (both new and existing) installations and for hybrid installations will be the subject of a separate notification.

Obligatory period for the completion of the project

- (54) The scheme introduces maximum periods to complete the projects, aiming at ensuring that successful bidders in the auction will implement their projects within a reasonable time-horizon, allowing Poland to meet its RES targets and to ensure the contribution towards objectives set in the 2030 Framework. For example, in the case of installations using solar energy successful bidders will have up to 24 months to complete the project; offshore wind power will have up to 72 months and other technologies will have up to 48 months. The periods reflect the duration of the investment process for the relevant technologies (with a reasonable margin). Pursuant to the proposed amendments to the RES Act, the period to complete the project for installations using solar energy will be 18 months.

Form of aid, financing and level of support

- (55) The support for installations of capacity of 500 kW and above will be granted in the form of variable premium on top of the market price within a contract for difference for the maximum period of 15 years. The level of support for operators is determined on a "pay-as-bid" basis, noting that the bid cannot exceed the reference price. The operators will be obliged to sell contracted volume of electricity on the market and the settlement body (Zarządca Rozliczeń S.A., a 100 % State-owned company) will pay out support calculated as the difference between bidding price (resulting from the submitted bid) and the wholesale electricity price. The settlement will be arranged on a monthly basis. In case the wholesale electricity price exceeds the bidding price, the surplus will be settled in the following months, and if such settlement will be impossible the surplus will be paid back to the settlement body (cf. Article 93 (11) - (12) of the RES Act).
- (56) The scheme will be financed from proceeds from the RES surcharge on electricity consumption collected by the Distribution System Operator or the TSO from the entities listed in Article 95 (3) of the RES Act, namely (i) final consumers connected directly to the distribution network of the RES fee payer; power utilities conducting business activity in the area of transmission or distribution of electricity, not being a RES fee payer, connected directly to the distribution network of the RES fee payer and power utility producing electricity, connected to the distribution network of a RES fee payer, selling electricity to at least one final consumer or power utility providing electricity transmission or distribution services not being a RES fee payer, connected to the devices, installations or networks of this power utility producing electricity. The amount of RES surcharge will be determined annually by the President of ERO (cf. Articles 98 - 99 of the RES Act) and will be imposed on every MWh of consumed electricity. Proceeds from RES surcharge will be transferred to the settlement body.
- (57) The operators of installations below 500 kW will not be obliged to sell electricity on the market. They can sell their electricity freely on the market and opt for the variable premium on top of the market price based on a contract for difference, but they can also sell their electricity to the obliged vendor, who will pay the remuneration settled in auction. For the beneficiaries opting to sell their electricity to the obliged vendor, the aid will take the form of a feed-in tariff, its amount is not established

administratively but is the result of an auction (cf. Article 92 (1) of the RES Act). The obliged vendor will subsequently make settlement with Zarządca Rozliczeń S.A.

Balancing responsibilities

- (58) According to Article 92 (2) of the RES Act, the costs of commercial balancing of electricity generated by RES installations with a total installed capacity of less than 500 kW are covered by the obliged vendor. All RES installations of larger capacity are subject to standard balancing responsibilities.

Lack of support in periods of negative prices

- (59) Support for the installations with an installed capacity of not less than 500 kW will not be granted in the periods in which there were negative electricity prices. According to Article 93 (4) - (7) of the RES Act, the support will not be paid with respect to the amount of electricity that has been generated in the hours for which the weighted average electricity prices on the power exchange were lower than zero PLN per 1 MWh for at least six consecutive hours. The proposed amendments to the RES Act clarify a method for metering the amount of electricity produced by a RES installation for which the prices were lower than zero PLN per 1 MWh.
- (60) In order to identify periods when support is not granted, spot transactions will be considered. According to the rules of the Polish power exchange, these are day-ahead or two-days ahead transactions.
- (61) The operator of the Polish power exchange will publish on its website information about the days and hours in which prices were negative, so that operators can take this information into account in their application for support submitted to the settlement body (Zarządca Rozliczeń S.A.).

Application

- (62) Producers intending to participate in an auction will be subject to formal evaluation carried out by the President of ERO (cf. Article 75 (1) of the RES Act) on the basis of documents constituting annexes to required application documentation (the list of required documents is stipulated in Article 75 (4) and (5) of the RES Act).

Auctions

- (63) Auctions are to be announced, organized and conducted at least once a year by the President of ERO (cf. Article 73 (1) of the RES Act). The President of ERO shall publish an information regarding an auction to be held in the Bulletin of Public Information of ERO not later than 30 days before the date of its commencement.
- (64) The Polish authorities indicated that not all the auctions for each of the technological baskets must be organized every year.
- (65) In accordance with Article 73 (5) of the RES Act, if the amount or value of electricity to be purchased in the basket will not be exhausted, the President of ERO may organize subsequent auctions for this basket in the same year. Pursuant to the proposed amendments to the RES Act, if the amount or value of electricity to be purchased in the auction organized for a given basket is not exhausted this amount and value of electricity will be transferred to the next basket in accordance with the order of auctions for sale of electricity from RES in a given year determined in a regulation of the Council of Ministers. The President of ERO may organize

subsequent auctions in the same year for the remaining amount and value of electricity when the last auction in the order determined in the regulation of the Council of Ministers was organized, taking into account the target for renewable energy sources and the potential for national energy resources.

- (66) The RES Act currently stipulates that, where the amount or value of electricity specified in the implementing regulations exceeds the amount and value of electricity stemming from successful bids, this electricity can be sold in the next auction for other categories of RES (cf. Article 73 (6) of the RES Act). Pursuant to the proposed amendments to the RES Act, this provision will be repealed.
- (67) The RES Act also introduces the institution of the emergency auction, which will be carried out "in the event of the need to make additional intervention on the market for renewable electricity" (cf. Article 80 (4) of the RES Act). Detailed conditions for such an auction (including indication of the type of RES installations referred to in Article 77 (4) of the RES Act) are to be determined in a separate regulation of the Minister of Energy.
- (68) The auctions are based on price: the winning bids will be those offering the lowest purchase prices (cf. Article 80 (1) of the RES Act). Submitted bids are not subject to negotiation. Offers are accepted until the amount or value of electricity resulting from the announcement of the auction is exhausted (in the case of exhaustion of any of these limits, further offers are not accepted). As indicated in recital (55), the level of support for operators is determined on a "pay-as-bid" basis, noting that the bid cannot exceed the reference price. When several bidders offer the same price of electricity, and the total offered amount or value exceeds the amount or value specified in the announcement of the auction, the order of submitted bids decides which bidders will be selected.
- (69) Pursuant to the proposed amendments to the RES Act, for annual auctions to be held from 2017 onwards (excluding the auctions which were organized in June 2017) the Polish authorities will introduce an additional cap, where no more than 80 % of volume (in MWh) of RES electricity submitted to the auction can receive support. If 80 % of the volume of electricity submitted will exceed the allocation stemming from the volume determined in the regulation, this volume will constitute a binding constraint. The 80 % cap will also be applied in case the volume of electricity submitted does not exhaust the allocation stemming from the volume regulation (hence, the cap allows granting aid to no more than 80 % of the volume of electricity submitted via bids to the auctions).¹⁴ The Polish authorities reserved the right to review this cap, provided that they will be able to demonstrate that higher cap still ensures sufficiently competitive auctions. Any revised cap needs to be notified to the Commission and will not be applied without prior approval of the Commission.

¹⁴ Initially, Poland indicated that based on the provisions of the RES Act, it is possible to have situations in which all the participants to an auction would receive aid. Poland argued that such auctions would nevertheless be competitive since the participants would have no way of knowing in advance this would be the case. At the request of the Commission, who pointed to the fact that according to the EEAG a competitive bidding process must lead to a situation where not all bidders can receive aid (see the definition of the competitive bidding process in the EEAG, point 19(43)), Poland agreed to introduce an additional safeguard and to cap the number of participants who can receive aid in an auction.

- (70) An auction can be cancelled if all offers have been rejected, or if the auction could not be performed due to technical reasons (cf. Article 81 (3) of the RES Act). Furthermore, an auction can be held only if no less than three valid bids meeting the requirements are submitted (cf. Article 78 (5) of the RES Act)
- (71) In the case of new installations, it is required that the devices for generating electricity mounted in these installations have been manufactured no later than 48 months (in the case of offshore wind power not later than 72 months) before the date of generation electricity in the plant for the first time (cf. Article 74 (1) of the RES Act). Pursuant to the proposed amendments to the RES Act, the devices for generating electricity mounted in these installations should have been manufactured no later than 36 months (in the case of PV installations not later than 18 months, onshore wind – 24 months and offshore wind – 72 months).
- (72) Initially, the RES Act stipulated that installations using biomass to produce electricity¹⁵ will be required to maintain adequate participation of the so-called "local biomass" in the total mass of biomass used as fuel (cf. Article 73 (2) (2) of the RES Act). This share will be determined by a regulation issued by the Minister of Energy (cf. Article 61 of the RES Act). According to Articles 2 (3) and 119 of the RES Act, "local biomass" is biomass from energy crops and waste residues from agricultural production and processing industry, its products, cereals (other than wholesome), obtained in a sustainable manner within a radius of not more than 300 km from the installations in which the respective biomass will be used. The Polish authorities explained that since no implementing regulation was adopted, the provision requiring to source biomass within a radius of 300 km from a RES installation was never applied and will not be applied. Furthermore, pursuant to the proposed amendments to the RES Act, the Polish authorities committed that this provision would be repealed.
- (73) On the basis of Article 119 (2) of the RES Act, the Minister of Agriculture may determine types of biomass, taking into account the need to preserve the sustainable use of biomass and the impact on food security.
- (74) For the first round of auctions, in 2016, Poland decided to organise four auctions, three for existing installations and one for new installations.
- (75) For existing installations (which receive currently support under the CO system) it has been decided to organise auctions for the following technological baskets:
- installed capacity up to 1 MW with annual productivity of 3 504 MWh/MW/year and with CO₂ emission level up to 100 kg/MWh (mainly hydropower installations) – for this basket the Polish authorities planned to procure maximum 1 306 870 MWh for maximum 538 297 239 PLN and have explained that the amount of electricity to be procured corresponds to about 50 % of the total installed capacity (productivity of 3 600 MWh/MW/year was assumed) of these installations in Poland;
 - installed capacity of up to 1 MW using solely agricultural biogas for the production of electricity – for this basket the Polish authorities planned to procure maximum 2 113 887 MWh for maximum 1 262 797 422 PLN and have explained

¹⁵ Other than micro-installations or small installations

that the amount of electricity to be procured corresponds to about 50 % of the total installed capacity (productivity of 7 600 MWh/MW/year was assumed) of these installations in Poland;

- installed capacity above 1 MW using solely agricultural biogas for the production of electricity – for this basket the Polish authorities planned to procure maximum 2 309 382 MWh for maximum 1 365 351 905 PLN, and have explained that the amount of electricity to be procured corresponds to about 50 % of the total installed capacity (productivity of 7 600 MWh/MW/year was assumed) of these installations.

- (76) For new installations only one auction was planned for the basket consisting of "other technologies" for installations with installed capacity up to 1 MW. The Polish authorities planned to procure maximum 1 575 000 MWh for maximum 744 036 736 PLN, and estimated that such an amount of electricity could result in the deployment of 100 MW of PV capacity¹⁶. Poland selected this basket and focussed on PV installations because they are characterized by a short investment process, allowing the Polish authorities to verify the effectiveness of the support system (i.e. to check how many successful projects were put into operation), but also because they considered that PV installations may contribute significantly to safe operation of the national electricity system in the summer. Poland further explained that the number of projects submitted to the President of ERO for verification procedure indicated that there was likely to be a strong competition between participating bidders in this auction.
- (77) The auctions took place on 30 December 2016. The Polish authorities informed that in the basket for the RES installations with installed capacity up to 1 MW using solely agricultural biogas for the production of electricity, 7 out of 7 submitted projects were selected. In the auction for RES installations with installed capacity up to 1 MW with annual productivity of 3 504 MWh/MW/year and with CO₂ emission level up to 100 kg/MWh, 49 out of 49 submitted projects were selected. In the auction for new installations consisting of "other technologies", 84 out of 152 submitted projects were successful. The auction for the existing installations with installed capacity above 1 MW using solely agricultural biogas for the production of electricity was not held due to insufficient number of bidders (less than three bids were submitted). The results of the auctions were validated by the President of ERO on 3 January 2017.
- (78) The Polish authorities informed that the auctioning platform was not accessible to all interested participants on the day when the auctions were held. The unavailability of the platform was caused by technical issues and the Polish authorities have already undertaken steps in order to prevent such situation in the future. Nonetheless, the prices of the selected projects did not exceed the reference prices.
- (79) Furthermore, the Polish authorities decided to organize an additional round of auctions for two technological baskets:

¹⁶ Their average productivity in Polish conditions is assumed at 1050 MWh/MW/year.

- "other technologies" for new installations with installed capacity up to 1 MW – for this basket the Polish authorities planned to procure maximum 4 725 000 MWh for maximum 2 182 908 687PLN;
 - existing installations with installed capacity up to 1 MW with annual productivity of 3 504 MWh/MW/year and with CO₂ emission level up to 100 kg/MWh (mainly hydropower installations) – for this basket the Polish authorities planned to procure maximum 1 484 764 MWh for maximum 631 329 732PLN.
- (80) The auctions took place on 28 and 29 June 2017. In the auction for new installations consisting of "other technologies" 489 offers were received, 472 offers were admitted and 352 offers were successful. In the auction for RES installations with installed capacity up to 1 MW with annual productivity of 3 504 MWh/MW/year and with CO₂ emission level up to 100 kg/MWh 48 offers were received and 44 offers were successful. The results of the auctions were validated by the President of ERO on 4 July 2017. The prices of the selected projects did not exceed the reference prices.

EIUs support scheme

- (81) For the EIUs support scheme, the beneficiaries are undertakings from the sectors listed in the RES Act (cf. Article 52 (6) of the RES Act) in accordance with Annex 3 to the Energy and Environmental Aid Guidelines (EEAG)¹⁷.
- (82) Reliefs are granted to EIUs (called industrial users in the RES Act) based on Articles 52 - 55, 188, 188a, 190 and 199 of the RES Act in the form of reductions in the funding of support for electricity from renewable energy sources, namely reductions in the funding of the notified RES support scheme and of the CO system. Poland stressed that the reliefs from funding the CO system were already considered compatible with the internal market in the Commission's decision in case SA.37345 and the notified support measure aims to provide similar relief to EIUs from the funding of the newly established RES support system.
- (83) Article 96 of the RES Act provides for relief for industrial users in the financing of the new RES support scheme. The relief consists in the reduction of the basis, calculated as the amount of electricity consumed from the grid and used by that industrial user in a particular settlement period, for calculation of the RES surcharge (proceeds from which the support granted in the notified RES support scheme is financed). In order to be qualified as an industrial user, the entity must conduct its predominant economic activity in one of the sectors listed in the RES Act (cf. Article 52 (6) of the RES Act). These sectors are covered by Annex 3 to the EEAG. In order to take advantage of the relief, the industrial users need to prove that their electro-intensity is not less than 3 %.
- (84) The level of relief will vary depending on the share of electricity costs per unit of gross value added of the beneficiary. The levels of reductions will therefore be determined by the electro-intensity of the beneficiary. The rules for the calculation of this ratio are specified in Article 188(10) - (13) of the RES Act, and follow the methodology from Annex 4 to the EEAG.

¹⁷ Guidelines on State aid for environmental protection and energy 2014-2020 (OJ C200 of 28.6.2014, p.1).

- (85) The basis for the calculation of the RES surcharge due from the industrial users will be:
- 80 % of consumed electricity, if the electro-intensity equals at least 3 % but not more than 20 %;
 - 60 % of consumed electricity, if electro-intensity equals more than 20 % but not more than 40 %;
 - 15 % of consumed electricity, if electro-intensity equals more than 40 %.
- (86) It follows that the support level will vary based on the electro-intensity of the beneficiary, and the aid intensity will be between 20 % and 85 %.

Compliance with the Water Framework Directive and the Waste Framework Directive

- (87) The Commission sent a Reasoned Opinion to Poland (Infringement No 2014/2252) regarding the compliance with the provisions of Directive 2000/60/EU of the European Parliament and of the Council¹⁸ ('Water Framework Directive'). In particular, the Commission is concerned about the fulfilment of the requirements set out in Article 4(7) of the Water Framework Directive regarding the obligation for the authorities to consider the impact of new developments on water bodies and a procedure for assessing whether such deterioration may occur. In addition, the Commission considers that the River Basin Management Plans ('RBMP'), adopted in 2009, did not consider maintenance works and their impact on the water bodies.
- (88) The Polish authorities have indicated that the provisions in the Water Framework Directive and in particular Article 4(7) thereof, which lays down criteria in relation to allowing new modifications of bodies of water are complied with in line with point 117 of the EEAG. They have further added that updated RBMP have been submitted to the Commission on 7 December 2016. Poland informed the Commission of the recently adopted Act of 20 July 2017 – Water Law, which was notified to the Commission by letter of 30 August 2017. The Polish authorities consider that this Act fully transposes the Water Framework Directive into national legislation.
- (89) In any event, the Polish authorities committed that only installations which comply with the provisions of the Water Framework Directive, and in particular Article 4(7) thereof, which lays down criteria in relation to allowing new modifications of bodies of water, will be granted State aid under the support scheme for RES assessed in the present decision.
- (90) The Polish authorities stated that no more than 30 % of municipal waste would be treated in thermal waste processing installations. Furthermore, the Polish authorities committed that no overcapacity of these installations undermining implementation of the waste hierarchy and implementation of binding recycling targets will be installed.

¹⁸ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327 of 22.12.2000, p. 1).

- (91) Poland underlined that as regards compliance with Directive 2008/98/EC of the European Parliament and of the Council¹⁹ ('Waste Framework Directive'), the waste hierarchy will be duly respected in line with point 118 of the EEAG, as identified potential for waste thermal processing is aligned with the foreseen stream of waste that cannot be dealt with in a more environmentally friendly manner.

2.4. Duration and budget

- (92) Support under the RES support scheme may be granted in the auctions that can be organized no later than 30 June 2021 (the day of settlement of the auction is decisive in this respect).
- (93) Successful bidders will be entitled to receive support for a period not longer than 15 years. Pursuant to Article 77 (1) (2) of the RES Act, the Minister of Energy shall determine by regulation the period for granting support at least 60 days before the date of the organization of the first auction in a given year. For installations that migrate into the auction system from the green certificates system, the period for obtaining support is calculated from the date of generation of electricity for the first time confirmed by a certificate of origin (cf. Article 92 (6) of the RES Act), and for the installations which will for the first time generate electricity after the conclusion of the auction the support period will be counted from the date of the introduction of electricity to the grid for the first time after the conclusion of the auction (cf. Article 92 (7) of the RES Act).
- (94) As indicated in recital (54), successful bidders which generate electricity for the first time after the conclusion of the auction will have from 18 to 72 months to complete their projects and start producing electricity. As the support is paid as of the date of the introduction of electricity to the grid for the first time after the conclusion of the auction the support will be paid out approximatively from 2017 until 2040.
- (95) Poland confirmed that support under the RES support system will not be granted for a period exceeding the useful life of the installation (i.e. the period of accounting depreciation).
- (96) The budget for RES is allocated for the period 2016-2020.
- (97) The total budget for the scheme is PLN 40 billion (approximately EUR 9.2 billion) with respect to RES support and PLN 300 million (approximately EUR 69 million) with respect to support for EIU reductions in the funding of support for RES.
- (98) Poland explained that that the reductions under the EIUs support scheme came into effect on 1 July 2016. The budget of reliefs for EIUs covers 10 years. Therefore, the reduced RES surcharge for EIUs will apply until 30 June 2026.

2.5. Transparency and cumulation

- (99) Poland confirmed that all transparency requirements set out in points 104 - 106 of the EEAG will be complied with. The information concerned by these requirements will be published on the website of the Polish competition authority (UOKiK) (<https://sudop.uokik.gov.pl>).

¹⁹ Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ L 312, 22.11.2008, p. 3–30).

- (100) Poland stated that the aid for RES can be cumulated with investments aid granted under the GBER²⁰ or De minimis regulations²¹. Poland further explained that in the frame of the notified RES support scheme (for both new installations and for existing installations that migrate from a system based on green certificates) admissible level of State aid will be verified in accordance with the procedure referred to in Article 39 of the RES Act. On the basis of this provision, the total value of aid may not exceed the difference between: i) the value calculated as the multiplication of the reference price of electricity in force on the date of submission of the bid and the amount of electricity submitted for the auction and ii) the assumed proceeds from the sale of the same amount of electricity (at average price of electricity on the competitive market announced by the President of ERO). Such a rule ensures that the amount of support together with revenues from the electricity market does not exceed the LCOE.
- (101) Article 39 (2) of the RES Act lists the types of aid, which are taken into account for calculating the amount of support already received by the operator (such as value of proprietary interest stemming from certificates of origin, cogeneration certificates of origin, etc.; credits and exemptions applicable to taxes and fees by virtue of the production of electricity in RES installations; other public investment aid allocated for the construction or conversion of a RES installation or other public operating aid pertaining to the RES installation). A detailed method of calculating the total amount of aid will be determined in a regulation and Poland provided this draft regulation as part of the notification documents.
- (102) A verification procedure has been established, which is to be conducted by the President of ERO. On the date of submission of his bid in the auction, the bidder shall provide the President of the ERO with a statement on the fulfilment of the cumulation rules. The President of ERO may require the applicant to provide any additional information and documents proving the proper application of cumulation rules. In case the President of ERO discovers non-compliance of the statement filed with the facts, he shall issue a decision rejecting the bid.
- (103) The President of ERO also has access to the System Scheduling, Registration and Monitoring of State Aid (Polish central register of State aid), where he can verify that the bidder did not receive excessive support for the same project. Moreover, the bodies granting investment aid for RES (National Fund for Environmental Protection and Water Management and sixteen Regional Funds for Environmental Protection and Water Management) will be transferring information on granted investment aid to the President of ERO.
- (104) If any irregularities resulting from incorrect application of the cumulation rules are discovered after the auction, the granting authorities are authorized to claim a refund of any excess aid, together with interest.
- (105) Pursuant to the proposed amendments to the RES Act, Article 39 of the RES Act will be amended by introducing a rule that investment aid must be deducted from operating aid (that is from the actual bid).

²⁰ Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty Text with EEA relevance (OJ L 187, 26.6.2014).

²¹ Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the agriculture sector (OJ L 352, 24.12.2013).

- (106) In this regard the Polish authorities plan to introduce the following procedure with respect to bidders who have received investment aid:
- the offered amount of electricity will be multiplied by the offered price (bidding price);
 - the product will be reduced by the gross grant equivalent of the investment aid;
 - the difference will be divided by the amount of offered electricity resulting in the final bidding price to which the operator will be entitled.
- (107) The Polish authorities explained that the new cumulation rules will ensure that investment aid is deducted from operating aid and consequently that all operators will be able to compete in auctions on equal footing (all operators will have to bid as though they have never received investment aid). The amount of investment aid will be discounted; therefore its amount will be calculated for the day of submission of the auction bid. On the day of submission of their bids the investors shall provide the President of ERO with a statement (made under penalty of criminal liability for making false statements) on the amount of investment aid to cover the investment costs of the RES installation in which the electricity submitted for the tender will be generated. The President of ERO has the right to conduct an audit to verify the submitted statements and has access to the System Scheduling, Registration and Monitoring of State Aid (Polish central register of State aid).
- (108) For the notified EIUs support measure, no cumulation is allowed, related to the same eligible costs.

2.6. Evaluation

- (109) Poland has submitted an evaluation plan for the measure. The main elements of the evaluation plan are described below.
- (110) The evaluation plan notified by Poland includes around 30 evaluation questions in order to assess the scheme's outputs, its direct effects, its indirect effects (both positive and negative), as well as the proportionality of the aid and the appropriateness of the chosen aid instrument.
- (111) The evaluation will provide general information, in particular, on whether the scheme achieves its objectives, on the number and type of beneficiaries, and on the auctions to be organised.
- (112) The direct effects of the scheme will be evaluated, for example by assessing developments in the production of energy from RES, installed capacity and the amounts of funds invested.
- (113) The main indirect effects of the scheme that will be evaluated are its contribution to the reduction of CO₂ emissions, the creation of jobs in the supplier industry, as well as its potential negative effects on grid stability, electricity prices or conventional electricity producers.
- (114) The appropriateness of the aid instrument will be evaluated by comparing the scheme with other similar schemes, used previously in Poland and concurrently in other EU Member States.

- (115) The proportionality of the aid will be evaluated in particular by assessing the economic viability of the assisted projects.
- (116) Evaluation questions related to the general outputs of the scheme will be mostly answered by providing quantitative statistical evidence. Other questions may require qualitative assessment or case studies.
- (117) To evaluate the direct effects of the scheme, Poland has committed to further extend the methodology by employing, to the extent possible given data availability, counterfactual impact evaluation methods in line with the Commission Staff Working Document on Common methodology for State aid evaluation.²² In particular, where appropriate, the report might include a comparison of projects that were just awarded the aid via an auction and projects that were not supported since they had a slightly worse bid. In addition, a supply curve from the auction bids – which, in turn, allows estimating a counterfactual – will be used in the framework of the evaluation.
- (118) In order to perform the evaluation, Poland has committed to making available to the independent evaluator the detailed data collected throughout the scheme's implementation by the Energy Regulatory Office. Other data sources available to the independent evaluator comprise PSE S.A. (the Transmission System Operator), Zarządca Rozliczeń S.A., and Towarowa Giełda S.A. The protection of business secrets and personal data protection will be ensured.
- (119) Poland has committed to submit the final evaluation report to the Commission by the end of 2020.
- (120) The evaluation will be conducted by an external independent evaluator to be selected through a simplified procedure or a public unlimited tender procedure depending on the contract value. Poland has committed to duly consider the relevant experience in related research, the multidisciplinary nature of the evaluation team and the qualifications and experience concerning quantitative methods.
- (121) The evaluation report will be published on the website of the Ministry of Energy (www.me.gov.pl).

2.7. Complaints

2.7.1. Formal complaint

- (122) The Commission received on 12 April 2017 a complaint regarding the notified aid to certain RES producers.
- (123) The complainant argues that the auction system does not contribute to the objective of common interest being the promotion of the development of RES, as prescribed by Article 194 TFEU. In particular, it does not contribute to achieving the overall national target set out in the RES Directive for Poland. The complainant also states that the measure is not an appropriate instrument to address the policy objective concerned.

²² Commission Staff Working Document on Common methodology for State aid evaluation, Brussels, 28.5.2014, SWD(2014) 179 final.

- (124) The complainant claims that the auction mechanism supports, in the greater part, the expensive technologies such as mainly biogas and biomass.
- (125) According to the complaint, the creation of technological baskets, based on untrue and misleading justification regarding stable/unstable and predictable/unpredictable energy sources, serves only as a pretext to support technologies which are politically supported by the State.
- (126) Moreover, the complainant argues that the mechanism of determining reference prices is used in an instrumental way in order to exert influence on the outcome of the auction.
- (127) The complainant also argues that Poland did not provide for the so-called "cascade" model of auctions i.e. the auctions in which the support not exhausted during a given auction is transferred to other baskets or on fully competitive basis, so that finally the support can be consumed by any RES technologies instead of getting frozen for further years.
- (128) According to the complaint, the auction scheme does not allow the investors to make responsible business decisions as to the investment process, as the allocations of volumes and budgets for particular technologies are announced only one year in advance; at the same time no reliable long-term prognoses regarding allocations are publicly available.
- (129) The complainant alleges that the bidding process through which the aid is granted is not based on clear, transparent and non-discriminatory criteria and that the introduction of technology-specific baskets is not legitimate and compatible with the EEAG. The complainant claims that the scheme in its current shape allows for the support granted thereunder to be available only to limited specific technologies.
- (130) The complainant argues that the State has never presented any analyses, reports or data confirming the negative influence of wind generation on the Polish electricity system, the lack of predictability of wind generation causing the material problems with balancing of the grid or any evidence of breakdowns of the Polish electricity system caused by the wind generation. In this context, the complainant claims that wind generation may have a positive impact on the balancing of the Polish electricity system and that the wind generation has become very predictable for the functioning and balancing of the system.
- (131) The complainant admits that although the diversification of RES technologies should be implemented to the Polish energy mix, such diversification should not be achieved through an almost complete ban on development of new wind energy sources and significant obstacles for operations of the existing wind energy projects.
- (132) The complainant also alleges that by imposing the real property tax on wind energy producers on stricter conditions than on other electricity producers, Poland granted illegal and incompatible aid to electricity producers other than wind producers. In particular, the complainant argues that the higher real property tax, applicable as of January 2017, results in a higher LCOE for wind energy producers compared to other RES technologies. The complainant is concerned that the higher LCOE will negatively impact the competitiveness of wind energy producers during the auctions. Therefore, in the complainant's view, due to the significant increase of the LCOE for

wind energy producers, the chances of wind projects to win auctions and obtain support decreased.

2.7.2. Market information

- (133) On 12 October 2016 the Commission received market information from a RES producer regarding support for RES in Poland.
- (134) The RES producer claims that a differentiated reference for calculating the real property tax, applicable as of 2017, is applied for wind turbines compared to other energy production installations. They argue that the tax discriminates one group of electricity producers, as other similar installations (hydro, gas, coal) are subject to different rates of real property tax. They allege that Poland granted aid without prior notification and approval by the Commission.

2.7.3. The position of the Polish authorities

- (135) On 28 June 2017 and 13 July 2017, the Polish authorities submitted their counter argumentation to the arguments raised in the formal complaint described in section 2.7.1.
- (136) The Polish authorities consider that the measure contributes to achieving an objective of common interest. The Polish authorities have presented the Polish RES capacity targets to be achieved by 2020 and consider that the auction system constitutes an appropriate measure to achieve the RES 2020 target. The Polish authorities confirm that they will act accordingly to fulfil their obligations with respect to the RES energy share in 2020.
- (137) Furthermore, the complainant considers that since the Polish authorities chose to support not only the cheapest technologies (i.e. onshore wind), the measure does not contribute to the objective of common interest. However, in the opinion of the Polish authorities, the EEAG leaves the option to support specific technologies if properly justified. They consider that biogas installations can contribute to achieving the RES target to the same extent as wind installations. Additionally, the Polish authorities consider that support can be granted to biomass installations (both co-firing and dedicated biomass installations) as long as overcompensation is avoided.
- (138) Moreover, the Polish authorities consider that the outcome of previous auctions has proved that projects involving small installations (in the basket addressed to "new other technologies") can indeed exhaust the budget of the auction and that strong competitive pressure can be exerted. Additionally, the Polish authorities have undertaken to introduce a cap ensuring competitive pressure in all auctions, as specified in recital (69).
- (139) As regards predictability of the auction system, the Polish authorities consider that they have presented their RES capacity targets for 2020, which ensures the predictability of the system. Additionally, they mention that the proposed amendments to the RES Act introduce more predictability with respect to prospective auctions (cf. Article 1 (17) of the proposed act amending the RES Act, according to which the maximum volume and budget will be published for auctions to be organized in the three upcoming years).

- (140) The Polish authorities are of the opinion that the auction system constitutes an appropriate measure to achieve the objective of common interest.
- (141) The Polish authorities consider that according to point 126 of the EEAG from 1 January 2017 Member States are obliged to organize technology neutral competitive bidding processes in which all RES technologies compete and where the cheapest offers win. However, they consider that based on proper justification they can depart from such an approach.
- (142) In the opinion of the Polish authorities, the complainant acknowledges the exceptions prescribed in point 126 of the EEAG; however he states that the structure of the auction baskets has never been explained to him. Firstly, the EEAG do not impose an obligation to justify towards the RES producers the introduction of different baskets and secondly, the fact that the complainant is unaware of the respective justification does not imply that he is correct in questioning the structure of the baskets. The Polish authorities note that in the course of the discussions with the Commission they submitted extensive information justifying the introduction of the baskets. Since the complainant does not question the overall design of the baskets and focuses mainly on alleged discrimination of wind technology, the Polish authorities consider that there is no need to provide detailed justification towards the complainant for establishing each basket, but to present relevant information substantiating reasons for which onshore wind installations are not supported to the extent expected by the complainant. In this respect the complainant does not question the separation of baskets for installations with installed capacity of up to 1 MW and above 1 MW. The Polish authorities consider that such a separation is justified by differences in LCOE between small-scale installations and larger installations and by the need to deploy installations of smaller scale, and that it serves the purpose of incentivizing the development of more dispersed RES.
- (143) Firstly, as regards the separate basket for installations fired with agricultural biogas, the Polish authorities informed the Commission that they consider this RES technology to have long-term potential and could contribute to a greater diversification of RES technologies in Poland. The Polish authorities have estimated a potential of biogas installations at 600 MW. The Polish authorities are of the opinion that over time, when biogas technologies are more widespread in Poland, their LCOE may drop to 485 PLN/MWh. Such a level is still high compared to other RES technologies and for this reason the creation of a separate basket is justified. The Polish authorities substantiate that the need to deploy more agricultural biogas technology is not only due to the decrease of LCOE, but also to other economic and social factors.
- (144) The Polish authorities consider that because local biogas installations will utilize agricultural biomass, i.e. agricultural by-products or waste and residues from agro-food industry, this would significantly contribute to an increased level of environmental protection (for example, in terms of the global warming, potential methane from agricultural by-products and residues from agro-food industry is a greenhouse gas over twenty times more potent than CO₂). Furthermore, the Polish authorities claim that biogas installations are high-efficiency CHP installations; therefore their deployment facilitates the achievement of energy efficiency targets. Poland's deployment of biogas installations will contribute to the improvement of the country's energy security by increasing RES energy's share from domestic raw materials (which cannot be used for the production of food). The Polish authorities

also believe that the deployment of biogas installations will result in the creation of green jobs (it is estimated that the deployment of 1 MW of biogas capacity results in the creation of 8-10 work places). Finally, in the opinion of the Polish authorities, the deployment of local and steerable RES installations which are close to energy consumers will reduce grid constraints.

- (145) Secondly, with respect to the argument concerning "network constraints and grid stability" the Polish authorities indicate that they have provided the Commission with a letter from the TSO confirming the crucial importance of developing RES installations with a particular profile of electricity generation for the stable operation of the national grid. In the opinion of the Polish authorities, the position of the TSO is prevalent when it comes to energy policy objectives. In the opinion of the Polish authorities, it cannot be ensured that wind installations will be available in summer months. For this reason in the previous auctions the Polish authorities contracted significant volumes of RES electricity from PV installations which generate electricity during critical summer months.
- (146) Thirdly, the Polish authorities have submitted data on the structure of the Polish RES sector. This data clearly illustrates that a uniform level of support for all RES technologies in previous years resulted in technologically unbalanced development of RES in Poland (i.e. the target for onshore wind installations set for year 2020 in the NREAP was achieved already in 2016). The Polish authorities now seek diversification in the structure of the RES sector and the EEAG allow them to do so.
- (147) Finally, the arguments brought up in the complaint may suggest that wind installations were deprived of the right to develop in Poland. However, data on installed capacity points to the contrary. Onshore wind technology significantly prevails over other RES technologies in terms of installed capacity and benefitted from State support in previous years.
- (148) Based on the above arguments, the Polish authorities conclude that the auction system fulfils the compatibility criteria set in the EEAG.
- (149) Regarding the differentiated reference for calculating the real property tax applied as of January 2017 for wind turbines compared to other energy production installations mentioned in recital (134), the Polish authorities have indicated that not only structures used by wind generators are taxed, but also all commercially exploited structures, therefore, they consider that the tax is not only applicable to undertakings operating in the energy sector.
- (150) The Polish authorities indicate that the maximum statutory tax rate, fixed at 2 % in the Act on Local Taxes, applies to all structures used for commercial activity. Therefore, the Polish authorities argue that they neither introduced a higher tax rate applicable to wind farms only nor granted any tax exemption to any other operators of energy generating installations.
- (151) The Polish authorities add that the tax rates are established annually in resolutions adopted by the municipalities, which are authorized to adopt different rates, subject to the maximum rates mentioned in recital (150). In consequence, the Polish authorities note that there is no single uniform real property tax rate in Poland.
- (152) The Polish authorities committed that they intend to amend the definition of "the structure" and that this amendment will be adopted in the same act together with the

proposed amendments to the RES Act. Pursuant to the proposed amendment the definition of "the structure" will be brought to its previous wording, hence the real property tax with respect to wind farms will be assessed according to the rules in force before 1 January 2017. Furthermore, the Polish authorities committed that the Polish government will take best efforts to ensure the entry into force of the amendments to the RES Act – including the amendment of the real property tax – no later than 1 January 2018. The Polish authorities committed that, if for any reason independent from the Polish government the provisions for the real property tax would not be introduced in the RES Act in time, the reference prices for wind technologies in the auctions to be held in 2018 will be amended in order to take into account a higher tax burden.

3. ASSESSMENT

3.1. Presence of state aid in the notified RES scheme

(153) A measure constitutes State aid in 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.*"

(154) In determining whether a measure constitutes State aid within the meaning of Article 107(1) TFEU, the Commission therefore must assess whether the measure (i) confers an advantage on certain undertakings or certain sectors (selective advantage); (ii) is imputable to the State and involve State resources; (iii) distorts or threatens to distort competition; and (iv) is liable to affect trade between Member States.

3.1.1. Existence of selective advantage

(a) Advantage for the producers of RES electricity

(155) Under the notified RES support scheme, operators of installations generating electricity from renewable energy sources (RES-E) receive an advantage, because they receive additional support in form of a premium on top of the market price and a feed in tariff of electricity generated and sold on the market on top of the electricity market price. Those payments guarantee RES-E producers revenues higher than the market price.

(156) In order for a measure to fall under Article 107(1) TFEU, it must be selective, i.e. favour certain undertakings or the production of certain groups.

(157) Furthermore, the support granted by the notified measure is selective because it favours only producers of RES electricity and is not accessible for other electricity producers or other sectors of the economy.

(b) Advantage to EIUs

(158) Measures which, in various forms, mitigate the charges which are normally included in the budget of an undertaking and which, without therefore being subsidies in the

strict meaning of the word, are similar in character and have the same effect are considered to constitute aid.²³

- (159) The Court has also ruled that in case of exemptions from charges, in order to prove an advantage is selective, the Commission has to prove that the measure at stake creates differences between undertakings which, with regard to the objective of the measure in question, are in a comparable factual and legal situation. The concept of aid does not encompass measures creating different treatment of undertakings in relation to charges where that difference is attributable to the nature and general scheme of the system of charges in question²⁴. The burden of proof for that latter part of the test is on the Member State.
- (160) Under the notified RES scheme, the RES support is eventually financed through a RES surcharge. The rule is that electricity suppliers have to acquire a mandatory quota of electricity from RES producers, whose cost they then recover from the end consumers through a component of the electricity bills (RES-surcharge). Therefore, consumers would normally have to bear the cost of financing RES by paying the respective component included in the electricity bill.
- (161) In the case at hand, pursuant to Article 96 (2) of the RES Act, EIUs are advantaged because the RES Act provides for a relief in form of a reduction of the basis (volume of electricity consumed) for the calculation of the RES surcharge (proceeds from which the support granted in the notified RES support scheme is financed).
- (162) The State grants a relief to EIUs, allowing them to pay a reduced RES surcharge because the basis for the calculation of the RES surcharge will be 15 %, 60 % or 80 % of their consumed electricity, depending on the electro-intensity of the beneficiary. This measure is selective as only industrial users from selected sectors and with an electro-intensity of at least 3 % can benefit from the relief.
- (163) The measure is selective because only EIUs active in sectors specified in Article 52 (6) of the RES Act with high international trade exposure are eligible for the aid.

3.1.2. *Imputability*

(a) *With regard to the producers of RES electricity*

- (164) The support for RES-E producers in the form of a variable premium on top of the market price or feed in tariffs (for installations with a rated output below 500 kW) is imputable to the State as it is established in RES Act and implementing regulations of Council of Ministers or of the Minister of Energy.
- (165) In addition, it is the State (Zarządca Rozliczeń S.A.- a 100 % State owned company appointed by the State for the task) that grants the market premium to RES producers for the electricity generated on top of the electricity market price and that monitors its correct implementation.

(b) *With regard to the EIUs*

²³ Judgement in *Banco Exterior de España*, Case C-387/92 [1994] ECR I-877, paragraph 13; Case C-75/97 *Belgium v Commission* [1999] ECR I-3671, paragraph 23.

²⁴ Judgement in *Netherlands v Commission*, Case C-159/01 *Netherlands v Commission* [2004] ECR I-4461, paragraph 42; Case C-279/09 P, *NOx emission trading scheme*, paragraph 62.

- (166) The reduced RES financing for EIUs is imputable to the State as it is established in the RES Act and in implementing regulations of the Minister of Energy.
- (167) With regard to the reduced RES financing for EIUs, the entitlements to EIUs are granted by the State (ERO) who also monitors its correct implementation.

3.1.3. Existence of State resources

- (168) 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"²⁵. 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 State budget.²⁶
- (169) In the case of the notified RES support scheme the revenues obtained by the producers of electricity from RES are ultimately financed by end consumers through the RES surcharge. However, the fact that this is not financed directly from the State budget is not sufficient to exclude that State resources are involved²⁷. It results from the case-law of the Court that it is not necessary to establish in every case that there has been a transfer of money from the State budget or from a public entity.²⁸
- (170) The relevant criterion in order to assess whether the resources are "state resources", whatever their initial origin, is that of the degree of intervention of the public authority in the definition of the measures in question and their methods of financing²⁹. Hence, the mere fact that a support scheme benefiting certain economic operators in a given sector is wholly or partially financed by contributions imposed by the public authority and levied on certain undertakings (electricity suppliers) which can pass on these costs on end consumers under the form of RES surcharge is not sufficient to take away from that scheme its status of aid granted by the State³⁰. Equally, the fact that the resources would at no moment be the property of the State does not prevent that the resources might constitute State resources, if they are under the control of the State³¹, in particular when aid is granted by public or private bodies designated or established by the State³². The Court found State resources in case of funds financed through compulsory contributions imposed by State legislation and

²⁵ Judgement in *Steinike & Weinling v Germany*, Case 76/78, EU:C:1977:52, paragraph 21; Judgement in *PreussenElektra*, C-379/98, EU:C:2001:160, paragraph 58; Judgement in *Doux Elevage and Cooperative agricole UKL-ARREE*, C-677/11, EU:C:2013:348, paragraph 26; Case *Vent de Colère*, C-262/12, EU:C:2013:851, paragraph 20; *Sloman Neptune*, joined cases C-72/91, C-73/91, EU:C:1993:97, paragraph 19.

²⁶ Judgement in *Doux Elevage*, EU:C:2013:348, paragraph 34; Judgement in *France v Commission*, T-139/0, EU:T:2012:496, paragraph 6; Case *Vent de Colère*, C-262/12, EU:C:2013:851, paragraph 21.

²⁷ Judgement in *Air France v Commission*, T-358/94, EU:T:1996:194, paragraphs 63 to 65.

²⁸ Judgement in *Doux Elevage*, EU:C:2013:348, paragraph 34; Judgement in *France v Commission*, EU:T:2012:496, paragraph 36; Judgement in *Bouygues Telecom v Commission*, C-39910 P et C-401/10 P, EU:C:2013:175, paragraph 100; Case *Vent de Colère*, C-262/12, EU:C:2013:851, paragraph 19.

²⁹ *France v Commission*, EU:T:2012:496, point 63 and 64.

³⁰ *France v Commission*, EU:T:2012:496, paragraph 61.

³¹ Judgment of 12 December 1996, *Compagnie nationale Air France v Commission*, T-358/94, EU:T:1996:194, paragraphs 65 to 67; *France v Commission*, C-482/99, EU:C:2002:294, paragraph 37; *Doux Elevage SNC*, EU:C:2013:348, paragraph 35.

³² *Sloman Neptun*, EU:C:1993:97, paragraph 19.

which were managed and apportioned in accordance with the provisions of that legislation³³.

- (171) This has been confirmed by the Court in the *Vent de Colère* case³⁴ where the Court has also ruled that a mechanism for offsetting in full the additional costs imposed on undertakings because of an obligation to purchase wind-generated electricity at a price higher than the market price that is financed by all final consumers of electricity in the national territory, constitutes an intervention through State resources.
- (172) In the light of those principles, the Commission has examined whether the market premium and feed-in tariffs to producers of electricity from RES and the relief granted to EIUs involve State resources.

(a) With regard to the producers of RES electricity

- (173) The Commission observes that the support scheme provides for a mechanism for full compensation of the additional costs incurred by Zarządca Rozliczeń S.A. - the entity on which the obligation to pay variable premiums on top of the market price and feed in tariffs in connection to the support of renewable electricity is imposed.
- (174) As indicated in recital (56), the scheme will be financed from proceeds from the RES surcharge collected by the DSO or the TSO on electricity consumption. The rate of RES surcharge will be determined annually by the President of ERO in accordance with the formula laid down in Articles 98 - 99 of the RES Act, which is published on the website of ERO. The DSO and the TSO calculate the RES surcharge by multiplying the rate determined by the President of ERO and the amount of electricity consumed by end-consumers. The proceeds from RES surcharge are transferred to the settlement body (Zarządca Rozliczeń S.A., a public entity). The settlement body manages these proceeds in accordance with rules established by the State. In accordance with the provisions of the RES Act and the Energy Law³⁵, the DSO and the TSO can pass on the entirety of the costs related to the RES surcharge on end-consumers by including an additional item in the electricity bills. Therefore, although the financial flows partially take place between private parties, they have to be considered as involving State resources because the State controls and manages them.

(b) With regard to the EIUs

- (175) The reductions that EIUs will benefit from are, like the market premiums paid in connection to the support of renewable electricity, financed by the end-customers. Pursuant to Article 97 (2) of the RES Act, the end consumers will ultimately have to carry the burden in their electricity bills administered by the obliged entities (in particular, electricity suppliers).
- (176) The Commission notes that, in the implementation of the measure, Poland has established the rules for the calculation of RES surcharges in Article 96 (2) of the RES Act. Furthermore, the eligible EIUs submit an application to the President of ERO, which verifies the request, and finally grants the reductions to them. The President of ERO verifies the eligibility of companies and delivers the administrative

³³ Judgement in *Italy v Commission*, 173/73, EU:C:1974:71, paragraph 16. Judgement in *Essent*, C-206/06, EU:C:2008:413, point 66.

³⁴ *Vent de Colère*, EU:C:2013:851.

³⁵ Journal of Laws 1997,number 54, item 348, as amended.

order approving them. This decision implies that electricity suppliers are not allowed to charge EIUs with the full amount of RES surcharges but only the reduced one.

- (177) For all the reasons set out above, the Commission comes to the conclusion that the reduction of burdens arising from the funding of the RES support system for EIUs involves State resources. The Commission observes in particular that the State can control, direct and influence the administration of the RES support reductions at stake: the State intervenes both at the level of the advantage and its financing. The State has defined in legally binding provisions to whom the advantage is to be granted, the eligibility criteria and the level of support, but it has also determined the financial resources to cover the costs of the support.

3.1.4. Threat of distortion of competition and trade

(a) With regard to the producers of RES electricity

- (178) The electricity market has been liberalised and electricity producers are engaged in trade between Member States. The renewable electricity is generally sold on the spot market where it enters in competition with electricity from different sources (such as electricity from conventional and nuclear sources).
- (179) Therefore, the advantage granted to the producers of renewable electricity is likely to distort competition on the electricity market and affect trade between Member States.

(b) With regard to the EIUs

- (180) The EIUs benefitting from the reduced RES surcharge are active in sectors with high international trade exposure (undertakings active in sectors included in Annex 3 to the EEAG), and as such, the measures at stake are likely to distort the competition on the markets in which they are active and affect trade between Member States.

3.1.5. Conclusion on the presence of State aid

- (181) Based on the above, the Commission concludes that both notified measures, the RES support scheme and the reduced RES surcharges for EIUs, constitute State aid in the meaning of Article 107 TFEU.

3.2. Legality of the aid

- (182) The Commission notes that Poland organised first rounds of auctions on 30 December 2016 and on 29 and 30 June 2017. Pursuant to the RES Act, the operators are granted the right to receive the support calculated as a difference between the bidding price at the auction and the market price from the day when the auction is settled. The RES-E operator receives the payment of the support from the obligated electricity supplier at the price bid at the auction, which is higher than the market price (for installations below 500 kW- Art 92(1) of the RES Act) or through a difference payment (difference between the price bid and the market price) from the settlement body (for RES-E- installations above 500 kW, see Art. 92 (5) of the RES Act) on the basis of monthly settlements.
- (183) Pursuant to Article 108(3) TFEU the Member State shall not put its proposed measures into effect until the Commission's approval. The Commission notes that Poland adopted the RES Act as well as implementing regulations, and it also carried

out two rounds of auctions in December 2016 and in June 2017. The granting of the aid occurred at the moment of the settlement of the auctions and the publication of the information about the successful bidders. The Commission considers that at that moment they received the right to obtain a premium on top of the market price. Therefore, the Commission considers that in relation to the already organized auctions the notified measure has been put into effect before the Commission's decision. In view of the above, in relation to these two rounds of auctions Poland has not complied with the standstill obligation under Article 108(3) TFEU.

- (184) Further, the Commission notes that Poland put the support scheme for EIUs proposed under the notified measure into effect in July 2016 before the measure had been approved by the Commission.
- (185) Therefore, the Commission regrets that in relation to the auctions organised in December 2016 and in June 2017 and to the support scheme for EIUs Poland has violated the standstill clause obligation under Article 108(3) TFEU.

3.3. Compatibility of the aid

Compatibility of the notified RES support scheme

- (186) The Commission notes that the notified RES support scheme aims at promoting the generation of electricity from renewable sources. Consequently, the notified scheme falls within the scope of the EEAG. Aid granted under the scheme will be paid out as a variable market premium, on top of the market price. For small installations (up to 500 kW) the aid is granted in form of a feed-in tariff. The Commission has therefore assessed the notified RES support scheme on the basis of the general compatibility provisions of the EEAG (set out in its section 3.2.) and the specific compatibility criteria for operating aid granted for electricity from RES (sections 3.3.1 and 3.3.2.1. of the EEAG).
- (187) The points relevant for the State aid assessment raised by the complainant and in the submission received from wind producers (market information) are addressed in the sections below.

Objective of common interest

- (188) The Commission notes that the aim of the notified RES support scheme is to help Poland achieve the renewable energy targets set by the EU as part of its 2020 strategy, to ensure the contribution towards objectives set in the 2030 Framework, and to implement its National Renewable Energy Action Plan. The scheme will allow Poland to reduce its greenhouse gas and CO₂ emissions.
- (189) The Commission notes that the scheme facilitates the deployment of RES in Poland. The Commission also notes that based on the 2017 Renewable Energy Progress Report³⁶ as of 2016 Poland was on the trajectory towards the achievement of its 2020 target; nonetheless, efforts are still needed to ensure that the target is met by 2020. The Commission considers that the notified scheme will help Poland to achieve the renewable energy target set by the EU as part of its 2020 strategy, in particular

³⁶ Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Renewable Energy Progress Report, COM(2017) 57, 1.02.2017

meeting its national target of a 15 % share of energy from RES in the national gross final consumption. In view of the above, the Commission does not share the view of the complainant that the notified RES scheme does not contribute to the objective of common interest and that it does not contribute to achieving the overall national target set out in the RES Directive for Poland.

- (190) The Commission also notes that the complainant alleges that the notified scheme does not contribute to the objective of common interest as it supports primarily more expensive RES technologies, such as biogas and biomass. However, the Commission notes that the EEAG does not prescribe which RES technologies the Member States should support. Furthermore, point 126 of the EEAG allows the Member States to design a RES support scheme taking into account not only the cost of technology but also other considerations.
- (191) The complainant further argues that the scheme fails to contribute to the objective of common interest as the creation of technological baskets is based on untrue and misleading justifications regarding the stability and predictability of energy sources. In recitals (223) to (242) the Commission addresses in detail the arguments put forward by the complainant.
- (192) Furthermore, the complainant alleges that the mechanism of determining reference prices is used in an instrumental way in order to exert influence on the outcome of the auctions. The Commission notes that the Polish authorities have confirmed that according to their methodology for calculating the reference prices, the LCOE of each technology is used as reference price. Nonetheless, the Commission takes note of the exception introduced by Poland for the auction organised in 2016 for onshore wind installations and of the commitment by the Polish authorities not to make any such exceptions from 2017 onwards.
- (193) The complainant also argues that the Polish authorities did not provide for the so-called "cascade" model of auctions i.e. the auctions in which the support not exhausted during a given auction is transferred to other baskets or on fully competitive basis, so that finally the support can be consumed by any RES technologies instead of getting frozen for further years. However, the Commission notes that pursuant to the EEAG Member States are not bound to introduce such a mechanism into their auction schemes.
- (194) Finally, according to the complainant, the auction scheme does not allow the investors to make responsible business decisions as to the investment process, as the allocations of amount and budgets for particular technologies are announced only one year in advance; at the same time, no reliable long-term prognoses regarding allocations are publicly available. The Commission notes that the EEAG do not impose Member States to announce long-term schedules of auctions. However, the Commission also notes that Poland submitted updated RES targets, as described in recital (30), which give an indication on long-term developments to the investors.
- (195) Furthermore, the Commission takes note of the draft amendments to the RES Act whereby the schedules of sales of electricity from RES will be published by the Minister of Energy by 31 October each year. The schedule will set the maximum amount and value of electricity from RES planned to be procured through the auction in the three following years.

(196) The Commission considers therefore that the notified RES support scheme is aimed at an objective of common interest in accordance with Article 107(3) c TFEU.

Need for state aid and appropriate instrument

(197) In point 107 of the EEAG, the Commission acknowledges that "*under certain conditions State aid can be an appropriate instrument to contribute to the achievement of the EU objectives and related national targets*".

(198) According to subsection 3.2.2 of the EEAG, the Member State needs 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. The Commission notes that in fact the market price of electricity remains significantly low compared to the costs of RES-E generation. The preliminary investigation has not revealed any indication of the contrary.

(199) According to point 116 of the EEAG, in order to allow Member States to achieve their national energy and climate change targets and to ensure RES contributions by 2030, the Commission presumes aid to energy from renewable sources to be appropriate and to have limited distortive effects provided all other compatibility conditions are met.

(200) As will be shown in the sections below, these conditions are met. Therefore the Commission considers the aid appropriate.

(201) Poland has also provided information about the results of its CO system, showing that it did not sufficiently incentivise the development of different RES technologies, and that the current situation is significantly different from the one depicted in its National Renewable Energy Action Plan.

(202) The Commission agrees that for the notified scheme the aid is necessary and that it is an appropriate instrument to address the objective of common interest.

Incentive effect

(203) In line with point 49 of the EEAG, the incentive effect occurs if the aid induces the beneficiary to change his behaviour towards reaching the objective of common interest which it would not do without the aid.

(204) The Commission notes that in the absence of aid, renewable energy technologies will not be deployed at the required scale and pace, as without the aid such projects would not be financially viable. The aid has therefore an incentive effect, since it induces the beneficiaries to change their behaviour and invest in renewable energy projects.

(205) Poland confirmed that the applicants for aid will have to pass through an application process. The Commission notes that the notified scheme complies with the obligation to use an application form for obtaining aid, as set out in point 51 of the EEAG.

Proportionality

- (206) 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.
- (207) Point 109 of the EEAG indicates that in the view of the Commission, 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.
- (208) Granting aid in the form of a variable market premium on top of the market price retains the commercial incentives on the operator to sell its electricity on the market in the normal market way, subject to competitive pressures from other market participants. The difference payment is calculated as the difference between the bidding price and the wholesale market price. Therefore, when the beneficiary sells electricity at a price below the wholesale market price, its overall sale price will be below the bidding price (even after the difference payment is paid). The mechanism therefore exposes the operator to a certain risk. Furthermore, in exchange for a certain stability and predictability of its revenues, the beneficiary will not be able to benefit of very high electricity prices. When the wholesale market price exceeds the bidding price, the generators have to pay the difference to the settlement body. Furthermore, the support is capped at the level of the bidding price, and in case of negative prices the generators will not receive the full difference between the bidding price and the wholesale market price.
- (209) The Commission notes that the bidding price paid will be established via a competitive bidding process, and it cannot in any event exceed the reference price established for each technology.
- (210) For the notified RES support scheme, Poland provided information about the methodology for the calculation of levelised costs of the eligible technologies. Moreover, Poland confirmed that the reference prices are calculated based on the levelised costs of the eligible technologies, using a 5 % real discount rate (with exceptions indicated in recital (28)). Poland also confirmed that the reference prices do not exceed levelised costs (and are below these costs for onshore wind) and that all reference prices are higher than electricity market prices. Poland has therefore demonstrated that levelised costs are above the electricity market price, and therefore the deployment of these renewable energy technologies would not be financially viable without support.
- (211) Finally, the Commission notes that for the auctions organised in December 2016 and in June 2017 Poland explained that for each of the organised auctions the amount offered in the auction was set up at half the total amount of the expected bids (determined during the pre-qualification process). The Commission also notes that the prices of the selected projects (bidding prices) could not exceed the reference prices. The Commission welcomes that for the auctions organised in 2017 onwards Poland undertook to introduce a mechanism aimed at ensuring that the auctions are competitive – the 80 % cap described in recital (69) above. The Commission takes note that this commitment is reflected in the draft amendments to the RES Act.

- (212) For the installations up to 500 kW the aid takes the form of a feed-in tariff, but the level of support is the result of a competitive bidding process, capped by an administratively set reference price.
- (213) The complainant alleges that a bidding process through which the aid is granted is not based on clear, transparent and non-discriminatory criteria and that the introduction of technology-specific baskets is not legitimate and compatible with the EEAG. As described in recital (129), the complainant claims that the scheme in its current shape allows that the support granted thereunder is available only to limited specific technologies.
- (214) In line with point 110 of the EEAG, technology specific tenders can be carried out by Member States, under certain circumstances (such as longer term potential of a given new and innovative technology, the need to achieve diversification, network constraints and grid stability and system integration costs). Point 126 of the EEAG provides that from 1 January 2017 onwards, all aid to renewable installations should in principle be granted by means of a competitive bidding process on the basis of clear, transparent and non-discriminatory criteria. Additionally, when such competitive bidding process is open to all generators producing electricity from RES on a non-discriminatory basis, the proportionality of the aid will be presumed.
- (215) The Commission notes that the RES support scheme notified by Poland is granted via auctions, for all the beneficiaries (including the installations below 1 MW), based on criteria clearly indicated in the national legislation. However, the precise terms of the auctions are to be established every year by the Polish authorities, on the basis of the criteria and methodology established by the RES Act, and published before the auctions are organised. The Commission considers that the auction criteria, as notified to the Commission, are clear and transparent.
- (216) The Commission has analysed the criteria proposed by Poland, and considers in general these criteria as non-discriminatory. The Commission notes that for the calculation of the reference prices for the auction organised in 2016, however, Poland departed from the general principle of using the LCOE as reference price for one particular technology, namely onshore wind. While the reference price reflected the LCOE for all other technologies, for onshore wind Poland decided to establish a reference price lower than the LCOE (see recital (29) above). The Commission has questioned this exception. Poland explained why they considered it necessary to impose such a restriction (to ensure that a large part of the available budget would be allocated to solar PV). The Commission notes that this exception has de facto imposed an additional restriction on onshore wind, as compared to other technologies, for that particular auction. Nonetheless, the Commission also notes that in spite of this exception in 2016 the support was granted to 10.6 MW of new wind installations, and in 2017 the support was granted to 6.7 MW of new wind installations. Furthermore, the Commission takes note of the commitment of the Polish authorities that such exceptions in the calculation of the reference prices will not be made from 2017 onwards.
- (217) Point 126 of the EEAG allows the organisation of technology specific tenders under certain circumstances. In consequence, the Commission considers that Member States are entitled to impose restrictions in the tender specifications aimed at ensuring that

the aid is granted to certain technologies, when justified³⁷. However, when such restrictions are imposed, it is important to ensure they are clear and transparent.

(218) Poland has provided information justifying the need to split the bidding process into different auctions allowing the participation of a particular type of installations (existing or new, above and below 1 MW) (so called baskets - see recitals (19) and

(22)). The justifications provided by Poland on the choice of the baskets, invoke in particular:

- grid stability concerns (the need to take appropriate measures to avoid situations compromising the stability of the grid, as the episode of August 2015);
- the need to achieve diversification (the previous support system (the CO system) allowed only for the development of a few, cheaper technologies, in particular biomass and onshore wind installations); and
- the long-term potential of certain technologies, in particular the agricultural biogas, which is estimated to be available in large quantities, but is currently not used to produce electricity (except for small quantities), mainly due to its higher costs.

(219) While the number of different auctions that Poland plans to organise will fragment the RES support scheme and is likely to reduce the competitive pressure in at least some of the auctions, the Commission notes that Poland has taken measures to ensure that all auctions will be competitive: in particular Poland undertook to limit the number of successful bidders in an auction by introducing a cap which allows granting aid to no more than 80 % of the volume of electricity submitted via bids to the auctions and ensure that there will not be any situation in which all participants to an auction can receive aid (see recital (69)). Moreover, the bids in auctions are capped by administratively set reference prices, reflecting the LCOE of RES technologies, which will ensure that there will be no overcompensation (e.g. for cheaper technologies that compete in the same basket with more expensive technologies). Finally, the way in which the Polish authorities have determined the precise terms for the auctions organized in December 2016 and in June 2017 (e.g. organising auctions only for the baskets where the information available to them showed there is likely to be a significant pipeline of projects, setting the volume offered in each auction at a level equivalent to half of the total expected volume of the bids for that auction) illustrates that the Polish authorities try to ensure that the aid is granted via competitive auctions.

(220) According to point 127 of the EEAG, aid to installations with an installed electricity capacity of less than 1 MW may be granted without a competitive bidding process. The Commission considers that the creation of specific baskets for installations with an installed electricity capacity of less than 1 MW is therefore justified.

(221) The Commission has examined further the arguments of Poland in favour of organising separate tenders for different categories of beneficiaries (new and existing,

³⁷ T the Commission has accepted in the past auctions for baskets of technologies with additional caps, or dedicated budgets for certain technologies, see for example the Commission's decision in case State aid SA.36196 (2014/N) – United Kingdom – Electricity Market Reform - Contract for Difference for Renewables, C(2014) 5079 final, JOCE C/393/2014.

below and above 1 MW) and for different baskets, in light of point 126 fifth paragraph (b) and (c), due to the need to achieve diversification and to ensure grid stability. The Commission also takes note that the Polish authorities have indicated that the need for greater diversification of RES technologies in Poland played the key role in the design of the RES support scheme.

- (222) The Commission welcomes the fact that Poland has tried to the extent possible to create baskets in which different technologies can compete with each other. In this context, the Commission notes that only two baskets are technology specific: the basket dedicated to waste incineration plants and the basket dedicated to installations using solely agricultural biogas for the production of electricity. All the other technologies are exposed, to some extent at least, to competitive pressure from other technologies (see table 2).
- (223) Furthermore, as described in recital (130), the complainant claims that the Polish authorities have not presented any analyses, reports or data confirming the negative influence of wind generation on the Polish electricity system, the lack of predictability of wind generation causing the material problems with balancing of the grid or any evidence of breakdowns of the Polish electricity system caused by the wind generation.
- (224) The Commission observes that as indicated in point 126 of the EEAG, bidding processes can be limited to specific technologies where a process open to all generators would lead to a suboptimal result in view of the longer-term potential of new and innovative technologies, the need to achieve diversification, network constraints and grid stability, system integration costs and the need to avoid distortions on the raw markets from biomass support. In order to justify the creation of different baskets the Polish authorities have invoked the need to achieve a greater diversification of RES technologies and the necessity to ensure grid stability. Furthermore, the TSO explained that if the deployment of RES in Poland was subject to the free play of market forces this could lead to a situation where important parameters for the safety of the national electricity system would not be ensured.
- (225) The Commission notes that the NREAP submitted by the Polish authorities as well as the reports published by the President of ERO demonstrate that the past development of RES in Poland led to a mix of RES technologies heavily dominated by onshore wind installations and biomass installations, while other technologies, such as PV, geothermal, agricultural biogas or offshore wind installations remain significantly underdeveloped or non-existent. In particular, the Commission takes note of the fact that the wind generation have already exceeded its target set in the NREAP.
- (226) The Commission also takes note of the updated targets in the NREAP submitted by the Polish authorities which reflect the need to achieve a greater diversification of RES technologies in Poland in the next years. Therefore, in order to incentivize the deployment of certain RES technologies Poland decided to design the baskets accordingly.
- (227) The Commission notes that in order to ensure a satisfactory level of grid stability, the Polish authorities have created separate baskets for stable technologies. These technologies (such as biomass, geothermal, hydro installations) can generate electricity in the short term irrespective of the weather conditions. The Commission also notes that they are characterized by greater predictability of electricity generation

in daily, monthly and annual cycles which contributes to stabilizing the national electricity system.

- (228) The Commission also notes that the creation of the baskets for stable technologies is further supported by the statement of the TSO that the notified RES scheme is designed to ensure that the right balance between stable and unstable RES is maintained in terms of their impact on the safety of the national electricity system and the costs of electricity supply. According to the TSO, the stable RES technologies include above all biomass and biogas power plants, and hydropower plants. The TSO demonstrated that the composition of the different baskets is justified on the grounds of specific problems of the Polish network and different generation costs and that it could contribute to the network's enhanced security and stability, which are described in more detail in recitals (32) - (38).
- (229) The Commission notes that, as explained by the TSO, due to the unstable character of wind generation, ensuring an adequate back-up capacity of conventional plants is crucial for the grid security. However, due to a long activation time the conventional plants lack the flexibility so they can be used to balance unstable RES generation only to a limited extent.
- (230) More specifically, the Commission takes note of the information provided by the TSO on the correlation between the increase in the number of activations and the time of exploitation of the conventional plants on the one hand, and the number of technical breakdowns on the other. The TSO demonstrated that in practice this results in reduced availability of the plants because of the need for reparations and maintenance. Therefore, the Commission notes that the structure and the technical state of the generation plants in Poland limits the ability of conventional generation to be used in order to ensure grid stability. Therefore, there is a need to maintain an appropriate balance between stable and unstable RES in order to ensure the grid stability and security of supply. These considerations can therefore be taken into account when designing the baskets.
- (231) Therefore, the Commission considers that this justification is acceptable in view of point 126, fifth sentence, letter c) of the EEAG.
- (232) The Commission considers that Poland demonstrated the need to split into two categories stable technologies based on the CO₂ emission level. In view of significantly higher LCOE, as indicated in recital (46), the RES technologies with low emission factor would be outbid by cheaper technologies with higher CO₂ emission level. The Commission agrees that this basket could be justified by the objective of achieving a higher diversification of the RES technologies and supporting technologies with a low CO₂ emission level.
- (233) The Commission also accepts the arguments by Poland that waste incineration plants should be assigned to a separate basket. The Commission notes that due to the low LCOE of the waste incineration installations, other technologies, including some biomass technologies, would not be able to compete with the waste incineration plants. Including the waste incineration installations with other technologies could undermine the objectives of the waste hierarchy which prioritises the ways in which waste should be treated, as set out in point 118 of the EEAG. Therefore, the Commission considers that, in order to ensure the respect of the waste hierarchy established in the Waste Framework Directive, the Polish authorities could monitor

and control the deployment of waste incineration plants by establishing a separate basket for such installations.

- (234) The Commission notes that, as demonstrated in the updated RES targets established in the NREAP, the deployment of agricultural biogas installations has been significantly underdeveloped compared to other RES technologies. Only a small number of agricultural biogas projects managed to develop under the CO system. In particular, the Commission notes that in December 2016 the installed capacity of installations using agricultural biogas was only ca. 100 MW, while the installed capacity of wind installations amounted to ca. 5 800 MW and of biomass installations ca. 1 300 MW. The Commission acknowledges that agricultural biogas in Poland is still a nascent technology and has a potential for development. As indicated in recital (51), there is an evidenced potential to deploy biogas capacity of ca. 600 MW.
- (235) The Commission recognizes that despite the capacity to stabilize the national grid, agricultural biogas installations cannot effectively compete with other RES technologies due to their high LCOE (see recital (50)). Creating a separate basket for agricultural biogas installations would enhance their deployment according to the RES targets and ultimately will contribute to a greater diversification of RES technologies in Poland, which could be justified on the basis of point 126 of the EEAG.
- (236) The complainant also argues that although the Polish energy mix of RES technologies should be more diversified, such diversification should not be achieved through an almost complete ban on development of new wind energy sources and significant obstacles for operation of the existing wind energy projects.
- (237) The Commission notes that onshore wind and PV installations compete in the same basket. The Commission considers that Poland has demonstrated that its target for onshore wind installations has been exceeded while other intermittent RES technologies, mainly PV installations, remain below the updated targets. The Commission notes that Poland could incentivize the deployment of other under-developed technologies in order to achieve a higher diversification of the RES technologies.
- (238) The Commission notes that at present, while the capacity of wind farms connected to the national electricity system is around 5.8 GW – of which over 1.7 GW is provided by wind farms connected to the medium voltage distribution network – the capacity of photovoltaic farms connected to the grid is only around 180 MW (MV grid). Therefore, the Commission acknowledges that the support of under-developed RES technologies could be justified.
- (239) The complainant submitted studies on the impact of wind generation on the stability of the national electricity system and on the predictability of wind generation. The complainant argues that the wind generation could contribute to a greater safety of the Polish grid. It also claims that the wind generation has become predictable for the functioning and balancing of the national grid.
- (240) The Commission examined the arguments put forward by Poland as regards the need for diversification of RES technologies and grid stability. In particular, the Commission observes that, in the TSO's view, unlike in the case of stable technologies the quantity of electricity produced by wind and PV installations depends on the current atmospheric conditions, which determine the variable nature

and unpredictability of their power output in the long term. According to the TSO, this creates uncertainty as to the possibility and the extent of using these sources to cover the electricity needs in the national power system, in particular at peak times. At the same time, the Commission acknowledges that the wind and photovoltaic power are often complementary.

- (241) The Commission also took into account the TSO's argument that in summertime the power curve generated by PV installations very nearly matches the power demand curve within the national power system, and naturally fits in with the requirements of the system.
- (242) Based on the above, the Commission considers that the Polish authorities have duly justified the existence of each basket in line with the requirements of point 126 of the EEAG. In particular, the Commission also considers that the restrictions in the tender specifications proposed by the Polish authorities are clear and transparent.
- (243) The Commission further notes that the notified RES support scheme is subject to evaluation by an independent evaluator, and the Polish authorities are committed to rigorously evaluate the performance of the support system, as notified.
- (244) In line with the requirement of point 124 of the EEAG, the aid is provided in the form of a variable market premium on top of the wholesale price for electricity, for all installations above 500 kW. This premium consists in the difference between the bidding price (determined by the bid submitted in the auction) and the wholesale electricity price. Poland confirmed that all beneficiaries with an installed capacity above 500 kW have standard balancing responsibilities, and will not receive support in case negative electricity price episodes last more than 6 hours. In line with point 124 of the EEAG, it is expected that these measures will contribute to integrating renewable electricity in the market. Installations with a rated output below 500 kW could opt to sell the electricity to an obliged vendor and in this case the aid will take the form of a feed-in-tariff, the level of which will be the level determined through the competitive bidding process.
- (245) In view of the above, the Commission considers that the notified measure is in line with point 124 of the EEAG.
- (246) Since the aid granted under the notified RES support scheme will be granted in a competitive bidding process (including for installations below 1 MW), there is no need for individual notification, in line with section 2, point 20 of the EEAG.
- (247) The Commission considers that Poland has sufficiently demonstrated that, taking into account all the measures and safeguards introduced to ensure the auctions are competitive, all the auctions can be considered to be a competitive bidding process open to generators producing electricity from renewable sources. Therefore, in accordance with point 126 of the EEAG, it is presumed that the aid is proportionate and does not distort competition to an extent contrary to the internal market.
- (248) The Commission notes that point 129 of the EEAG is complied with, as the duration of support is limited to 15 years (therefore not exceeding the lifetime of the projects), and any investment aid, and other support previously received or granted, will be deducted from the support under the notified RES support scheme (see recital (105)).

(249) Pursuant to point 121 of the EEAG the Commission approves the aid schemes for 10 years. Although the RES support is foreseen to be provided for 15 years, the support may be granted in auctions concluded no later than on 30 June 2021. The Commission therefore considers that the requirement stemming from point 121 of the EEAG is complied with. Should the Polish authorities decide to grant support after 30 June 2021, the scheme will require re-notification.

(250) Based on the above, the Commission considers that the aid granted for the notified RES support scheme is proportional.

Distortion of competition and balancing test

(251) 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. Furthermore, for all beneficiaries with an installed capacity above 500 kW, the aid is granted based on a contract for difference, which is a market based instrument.

(252) The Commission considers that aid to renewable energy does not have undue distortive effects on competition and trade because the applicable conditions laid out in section 3.3.2.1 of the EEAG are fulfilled, as shown in recitals (55) to (61).

(253) According to point 116 of the EEAG, the Commission presumes aid to energy from renewable sources to have limited distortive effects provided all other compatibility conditions are met. As illustrated above, the Commission considers that these conditions are met.

(254) Consequently, the Commission concludes that the distortion of competition caused by the notified scheme is balanced by the positive contribution towards common policy objectives.

Transparency

(255) 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. In line with point 106 of the EEAG, Member States are requested to comply with this obligation as of 1 July 2016.

(256) The Commission notes that Poland undertook to ensure the transparency of the aid granted and to publish the relevant information in line with the requirements of the EEAG.

Compliance with Article 30 and 110 TFEU

(257) In the field of energy, any levy that has the aim of financing a State aid measure needs to comply in particular with Articles 30 and 110 TFEU. The Commission has therefore verified if the financing mechanism of the notified aid measures complies with Articles 30 and 110 TFEU.

(258) Based on the current provisions of the RES Act, a RES surcharge is imposed on all electricity consumed in Poland (cf. Article 95 and 96(1) of the RES Act), regardless of whether it was produced on Polish territory or abroad. Given the above, in order to ensure compliance of the support mechanism with the provisions of Articles 30 and

110 TFEU and in accordance with previous commitments of the Polish authorities (mentioned in the Commission's decision in the case SA.37345³⁸), the auctions will be open to RES located outside the Polish territory and outside the Polish exclusive economic zone, provided that:

- the foreign electricity will meet the conditions for being qualified as renewable energy within the meaning of the RES Directive;
- the generation of electricity in the installation of RES outside the Polish territory and outside the Polish exclusive economic zone will be confirmed by an authorized entity, within the meaning of the rules of the State where electricity was produced, with the possibility of verification of the data contained in the confirmation by the President of ERO;
- the foreign operator, in the case where its installation has received aid in the State in which it is located, must comply with cumulation rules set out in Article 39 of the RES Act;
- the foreign operator meets the requirements of formal preparation for the generation of electricity in the RES installation as referred to in Article 75 of the RES Act, received a certificate of admission to the auction from the President of ERO and meets the requirements referred to in Articles 39, 74 and 79 of the RES Act.

(259) These conditions were introduced by the Polish authorities with the aim to ensure that renewable energy will benefit from support, the cumulation rules are applied and the projects submitted to auctions can realistically be expected to be implemented. Poland highlighted that in terms of cumulation rules and formal preparation of the projects, the same requirements are imposed to domestic and foreign operators.

(260) Pursuant to Article 73(10) of the RES Act the opening of the Polish auction system to foreign operators will be conditional upon:

- the conclusion of the intergovernmental agreement between the Republic of Poland, and the State where the RES installation is located³⁹, and
- the provision of the physical transmission of electricity between the States.

(261) Each year, before the 30 November, the Minister of Energy will determine by regulation "the amount and value of electricity generated in RES installations located outside the territory of the Republic of Poland and outside the Polish exclusive economic zone, which may be sold by auction in the next calendar year, taking into account the national energy policy, the capacity of the national electricity system in the field of cross-border exchange and the total amount and value of electricity, which in the next year is to be sold by auction, with the provision that the amount of electricity from such installations in a given year may not be greater than 5 % of the total electricity sold in the auction in the year preceding the period covered by the

³⁸ See recital 44 of the decision.

³⁹ Poland explained that the intergovernmental agreement is meant to guarantee the fulfilment of the conditions referred to above, in recital (258), while ensuring that there is no discrimination against foreign operators due to formal criteria (in particular Poland clarified that foreign operators will not be obliged to submit documents that are not available in the other State). They further indicated that the condition of reciprocity introduced in Article 73 (10) (1) of the RES Act will be repealed.

regulation" (cf. Article 73 (9) of the RES Act). The Polish authorities confirmed that for year 2017 the amount of electricity that will be made available to foreign RES installations in auctions will equal 5 % of the total electricity to be procured. The Polish authorities furthermore undertook not to reduce this limit in the following years.

- (262) By letter of 19 June 2017 Poland informed the Commission that pursuant to the planned amendments to the RES Act, the amount and value of electricity generated in RES installations located outside the territory of the Republic of Poland and outside the Polish exclusive economic zone, which may be procured by auction in the next calendar year will be equal to 5 % of the total electricity procured in the preceding year.
- (263) Based on historical data from the Annual Cross-border Exchanges Agreed Graphics (UGWM), the share of imported electricity in the final consumption in Poland is less than 2.27 %. The Polish authorities explained that the low imports are mainly due to significant unscheduled flows from Germany.
- (264) Nevertheless, the Commission notes that the installation of the phase shifters at the interconnection points with Germany may lead to the reduction of unscheduled loop flows and allow increasing the share of trade with foreign RES producers. The Polish authorities have confirmed that the amount of electricity that will be made available to foreign RES installations in auctions will equal to 5 % of the total capacity of RES electricity procured in the auction in the preceding year. This value is significantly higher than the current share of RES imported electricity in the final consumption in Poland (2.27 %). Therefore, the Commission considers that the proposed opening of the scheme to foreign RES installations in the amount equal to 5 % of the total electricity procured in the preceding year ensures compliance with Articles 30 and 110 TFEU.
- (265) In the light of the above, the Commission considers that the financing mechanism of the notified aid measures can be considered as compatible with Article 30 or Article 110 TFEU.

Compliance with Water Framework Directive and Waste Framework Directive

- (266) As indicated in point 29 of the EEAG, if a State aid measure or the conditions attached to it (including its financing method when it forms an integral part of it) entail a non-severable violation of Union law, the aid cannot be declared compatible with the internal market. More specifically, and as noted above in recital (87), point 117 of the EEAG stipulates that when granting aid for the production of hydro power, Member States must respect the Water Framework Directive and in particular Article 4(7) thereof. The Commission notes that a Reasoned Opinion (Infringement No 2014/2252) regarding the compliance with the provisions of the Water Framework Directive was sent to Poland. As explained in recital (87), the Commission is concerned about the fulfilment of the requirements set out in Article 4(7) of the Water Framework Directive which could concern a number of hydropower plants from Poland,
- (267) Therefore, the Commission reminds Poland that the aid can only be granted in line with the provisions of point 117 of the EEAG. The Commission welcomes the commitment by Poland whereby the Polish authorities committed that only installations which comply with the provisions of the Water Framework Directive,

and in particular Article 4(7) thereof, which lays down criteria in relation to allowing new modifications of bodies of water, will be granted State aid under the support scheme for RES assessed in the present case.

- (268) The Commission also observes that as regards compliance with the Waste Framework Directive, Poland confirmed that the waste hierarchy will be duly respected in line with point 118 of the EEAG as identified potential for waste thermal processing is aligned with the foreseen stream of waste that cannot be dealt with in a more environmentally friendly manner.
- (269) In the light of the above the Commission considers that the RES support scheme complies with point 117 and point 118 of the EEAG.

Compliance with Article 34 TFEU

- (270) Pursuant to Article 73 (2) (2) of the RES Act in order to participate in auctions RES installations⁴⁰ using biomass to produce electricity will be required to maintain an adequate share of the so-called "local biomass" in the total mass of biomass used as fuel. The minimum share of local biomass in the total mass of the biomass is determined by a regulation issued by the Minister of Energy (cf. Article 61 of the RES Act). According to Article 2 (3a) of the RES Act, local biomass is defined as biomass from energy crops and waste residues from agricultural production and processing industry, its products, cereals (other than wholesome), obtained in a sustainable manner within a radius of not more than 300 km from the installations in which the respective biomass will be used in accordance with the requirements issued by the Minister of Agriculture pursuant to Article 119 and Article 119a of the RES Act.
- (271) The Commission notes that the above requirement limits the participation in the auctions of installations using biomass obtained from a radius beyond 300 km from the installation (including imported biomass). This requirement is capable of hindering, at least indirectly and potentially, imports of biomass from other Member States. It thus falls within the scope of Article 34 TFEU.
- (272) However, the Commission notes that to date Poland has not adopted provisions enabling the implementation of the requirement of the share of the "local biomass" in the biomass installations in order to participate in the auctions (cf. Article 73 (2) (2) of the RES Act). Furthermore, the Commission takes note that the Polish authorities have committed not to adopt such implementing provisions in the future and that RES Act provisions requiring to source biomass within a radius of 300 km from a RES installation will be repealed soon. The commitment to repeal this provision has been reflected in the draft law amending the RES Act.
- (273) In view of above and this commitment the Commission considers that in the context of compatibility assessment under the EEAG the requirement for sourcing local biomass to produce electricity has not been put into effect, therefore no violation of Article 34 TFEU could have been identified to date.

Conclusion with regard to the compatibility of the notified RES support scheme

⁴⁰ Other than micro-installations or small installations

(274) In light of the above assessment, the Commission considers that the notified aid scheme pursues an objective of common interest in a necessary and proportionate way in accordance with the EEAG and that therefore the RES support scheme is compatible with the internal market on the basis of Article 107 (3) c TFEU. In this context, the Commission also considers that the auctions organized in December 2016 and in June 2017 were compatible with the internal market on the basis of Article 107 (3) c TFEU.

Compatibility of the notified EIUs support scheme

(275) The Commission has assessed the notified EIUs support scheme on the basis of the EEAG, and in particular its section 3.7.2. (Aid in the form of reductions in the funding of support for energy from renewable sources).

(276) 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 be granted if the undertaking belongs to the sectors listed in Annex 3 to the EEAG. 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.

(277) Under the notified measure, the reduction for EIUs will be granted only in relation to the RES surcharge (i.e. with the burden for financing the notified RES support system, complementary to the relief already approved by the Commission in case SA.37345 in connection with the financing of the CO system). Undertakings from all sectors included in Annex 3 to the EEAG are eligible, subject to certain selection criteria, as explained below. On the other hand, only the companies from the sectors included in Annex III to the EEAG are eligible to benefit of a reduction, based on their electro-intensity.

(278) The selection of the beneficiaries and the differentiation of the aid intensity to which they are entitled are done on the basis of their electro-intensity. This constitutes an additional eligibility requirement imposed by the Polish authorities. The Commission notes that this additional requirement is objective, transparent and does not discriminate between undertakings in a similar factual situation (in line with point 187 of the EEAG).

(279) 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 Poland established complies with this condition, and the maximum reduction that can be granted (to beneficiaries with an electro-intensity greater than 40 %), is 85 %.

(280) Member States are required under section 3.2.7 of the EEAG to publish as of 1 July 2016 certain information related to beneficiaries of aid. The Commission takes note of Poland's commitment to comply with the transparency requirements.

(281) While the national legal basis foresees no end date for the reduction of burdens arising from financing the RES support systems for EIUs, Poland agreed to re-notify

the measure after 10 years (also the budget notified has been allocated for 10 years in conformity with point 121 of the EEAG).

- (282) Based on the above, the Commission considers that the assessed aid measure for EIUs is compatible with the internal market on the basis of the EEAG.

3.4. Evaluation plan

- (283) The EEAG (point 28 and Chapter 4) states that the Commission may require that certain aid schemes be subject to an evaluation, where the potential distortion of competition is particularly high, that is to say when the measure may risk significantly restricting or distorting competition if their implementation is not reviewed in due time. Given its objectives, evaluation only applies for aid schemes with large aid budgets, containing novel characteristics or when significant market, technology or regulatory changes are foreseen.
- (284) The present scheme fulfils the criteria of being a scheme with a large aid budget and containing novel characteristics; therefore it will be subject to an evaluation.
- (285) The scope and modalities of the evaluation have been defined, taking into account the Commission Staff Working Document on Common methodology for State aid evaluation, in an evaluation plan that Poland has notified together with the aid scheme and whose main elements are described in section 2.6 above.
- (286) The Commission considers that the notified evaluation plan contains the necessary elements: the objectives of the aid scheme to be evaluated, the evaluation questions, the result indicators, the envisaged methodology to conduct the evaluation, the data collection requirements, the proposed timing of the evaluation including the date of submission of the final evaluation report, the description of the independent body conducting the evaluation or the criteria that will be used for its selection and the modalities for ensuring the publicity of the evaluation.
- (287) The Commission notes that the scope of the evaluation is defined in an appropriate way. It comprises a list of evaluation questions with matched result indicators. Data sources are individually defined for each question. Moreover, the evaluation plan sets out and explains the main methods that will be used in order to identify the impacts of the scheme, and discusses why these methods are likely to be appropriate for the scheme in question.
- (288) The Commission acknowledges the commitments made by Poland that the evaluation will be conducted according to the notified evaluation plan by an independent evaluation body. The procedures envisaged for selecting such evaluation body are appropriate in terms of independence and skills. Moreover, the proposed modalities for the publication of the evaluation results are adequate to ensure transparency.
- (289) The Commission notes the commitment made by Poland to submit the final evaluation report by the end of 2020.

4. AUTHENTIC LANGUAGE

- (290) As mentioned in recital (3) of the present decision, Poland has waived its right to have the decision adopted and notified in Polish. The decision is therefore adopted and notified in English which is also the authentic language for this decision.

5. CONCLUSION

The Commission has decided, on the basis of the foregoing assessment, to consider the notified aid measure concerning the support scheme for RES compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union.

As regards the relief for EIUs, it has decided, on the basis of the foregoing assessment, not raise objections to this aid measure 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.

The Commission regrets that Poland put into effect the support scheme for EIUs and the RES support scheme in relation to the auctions organized in December 2016 and in June 2017 in breach of Article 108(3) of the Treaty on the Functioning of the European Union.

The Commission reminds the Polish 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).

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>.

The Commission reminds Poland that the evaluation report must be submitted by the end of 2020 at the latest.

Your request should be sent electronically to the following address:

European Commission,
Directorate-General Competition
State Aid Greffe
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully
For the Commission

Margrethe VESTAGER
Member of the Commission

CERTIFIED COPY
For the Secretary-General,

Jordi AYET PUIGARNAU
Director of the Registry
EUROPEAN COMMISSION