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**Subject: State aid SA.45861 (2016/N) – Bulgaria
Support to energy-intensive users in the form of a reduced surcharge**

Sir, /Madam,

1. PROCEDURE

- (1) Following pre-notification contacts, by an electronic notification of 5 July 2016 the Bulgarian authorities notified an aid measure in the form of a reduced contribution to finance the support for electricity from renewable sources for energy-intensive users (EIUs).

2. DETAILED DESCRIPTION OF THE MEASURE CONCERNED

2.1. The financing of the support system for promoting the production of electricity from renewable sources

- (2) In Bulgaria, the costs incurred from the support to renewable electricity at preferential purchase prices¹ are, since 1 August 2013, financed from the proceeds of auctioning greenhouse gas emission allowances, and a surcharge paid on top of the electricity price. The surcharge is paid by all end consumers connected to the Bulgarian electricity grid on their electricity consumed.

¹ Case number: SA.44840 (2016/NN)

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- (3) The surcharge is determined on an annual basis by the Bulgarian Energy Regulator – the Energy and Water Regulatory Commission (DKEVR). The calculation of the surcharge guarantees an equitable sharing among market players of the costs stemming from the financing of the support to renewable electricity.
- (4) For consumers on the liberalised segment of the electricity market the surcharge takes the form of a ‘public service obligations’ (PSO) levy paid per MWh of electricity consumed in addition to the electricity price. For consumers on the regulated segment of the electricity market the surcharge is incorporated into the regulated electricity price.

2.2. Reduction in the financing of the support system for EIUs

- (5) Since 2011, end users have faced rising electricity costs. According to the Bulgarian authorities, the consequences of these price increases are significant, especially for EIUs, eroding their competitiveness on international markets.
- (6) The Bulgarian authorities argue that a potential loss of competitiveness due to high costs of electricity may endanger the economic viability of EIUs. The latter generate approximately 10% of the country’s gross domestic product and are major employers. Their possible relocation or the closure of their business would have serious negative effects on the Bulgarian economy as a whole.
- (7) Therefore, the Bulgarian authorities notified a support scheme to compensate EIUs for part of the surcharge to finance the support for renewable electricity.

2.2.1. Beneficiaries

- (8) The beneficiaries of the notified scheme are industrial companies that are active² in a sector listed in Annex 3 of the EEAG³ and industrial companies with an electro-intensity of at least 20% that are active in a sector listed in Annex 5 of the EEAG.
- (9) The Bulgarian authorities have set the following further criteria that beneficiaries need to fulfil, companies:
 - cannot be “firms in difficulty” as defined for the purposes of the EEAG by the applicable Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty⁴;
 - cannot have outstanding tax or social security liabilities to the State or to municipal authorities, except where such outstanding liabilities have been rescheduled or deferred;
 - cannot have a pending obligation to reimburse any aid declared as unlawful and incompatible with the internal market by a Commission decision.

² This is demonstrated by having a minimum of 60% of the annual revenue for the preceding calendar year from the activity in a sector in Annex 3 or Annex 5 respectively.

³ Guidelines on State aid for environmental protection and energy 2014-2020, OJ C 200, 28.6.2014, p. 1–55.

⁴ OJ C 249, 31.7.2014, p. 1–28

- (10) In addition, when the beneficiary is subject to the requirements of Article 57 para. 2, p.1, 2 and 3 of the Energy Efficiency Act⁵, they (i) are subject to an energy efficiency audit or should apply a certified energy or environmental management system, subject to a certification procedure by an independent body for compatibility with European and international standards and (ii) should submit to the Agency for sustainable energy development a report on energy efficiency management.
- (11) The Bulgarian authorities apply a threshold of 1 GWh of annual electricity consumption. The Bulgarian authorities explained it is necessary as the benefits would not exceed the administrative cost for applying the aid scheme in view of the direct and indirect costs faced by the beneficiaries, the public administration and electricity suppliers. They have estimated that an annual consumption of 1 GWh would correspond to and amount to BGN 19 000 (EUR 9714.4).

2.2.2. *The level of compensation*

- (12) The EIUs eligible for aid under the notified scheme will benefit from the following reductions in the surcharge to finance support for renewable electricity, depending on the level of their electro-intensity:
- a) 40% reduction, for electricity-intensity from 5% to 10% included;
 - b) 60% reduction, for electricity-intensity over 10% to 20% included;
 - c) 85% reduction, for electricity-intensity over 20%.
- (13) The electro-intensity is calculated according to the methodology outlined in Annex 4 of the EEAG as the electricity costs of the beneficiaries divided by the respective gross value added (GVA). The Bulgarian authorities confirmed that also the GVA is calculated in line with Annex 4 of the EEAG as the gross operating surplus plus the relevant personnel costs.
- (14) The electricity costs are calculated as the product of historical electricity consumption and the weighted average annual electricity price for base load for the preceding calendar year as determined by the operator of the Bulgarian power exchange.
- (15) For new undertakings that have been operating for less than one year, the estimated data for the first year of operation will be used for the first year. In the second year of operation, the data relating to the first year of operation will be used. In the third year of operation the arithmetic mean of the data relating to years 1 and 2 of operation will be used. Starting from year 4, the arithmetic mean of the 3 previous years will be used.
- (16) Regarding the reference electricity price, which will be used for the calculation of the electricity costs, the Bulgarian authorities have explained that potential beneficiaries of the aid can buy electricity directly on the power exchange. In that context the chosen reference price is a good proxy for the average electricity price at which EIUs buy electricity in the Bulgarian market.

⁵ This provision requires energy efficiency obligations to undertakings falling outside the category of small and medium sized enterprises.

- (17) In addition to the reductions outlined in recital (12) above, the Bulgarian authorities intend to allow further reductions. These further reductions limit the amount of costs, resulting from the financing of support to renewable electricity, to be paid by eligible beneficiaries to:
- a) 4% of the GVA of the relevant company or
 - b) 0.5% of the GVA in case companies with an electricity intensity of at least 20%.
- (18) The Bulgarian authorities have estimated that only a limited number of companies - not more than 15 - may be able to benefit from the additional reduction as described in recital (17). These potential beneficiaries have a 50% share of Bulgarian exports and are an important value-adding factor for the Bulgarian economy. At the same time, they are under severe market pressure from international competitors.
- (19) According to the estimates of the Bulgarian authorities the additional reductions would amount to a total of BGN 2 832 000 (EUR 1 447 956) of aid.
- (20) In order to avoid overcompensation, the Bulgarian authorities further require that companies should not receive other forms of aid for the costs, covered by the notified measure.

2.2.3. Functioning of the scheme

- (21) The companies wishing to obtain the aid shall submit an application form by 31 March of the relevant year, accompanied by supporting documents sufficient to prove that all applicable eligibility conditions are complied with.
- (22) Following the assessment of the applications, the Ministry of Energy sends to the applicants either the approval of the reduction of the surcharge to finance support for renewable electricity or a notification specifying that the corresponding application is incomplete, or a letter of rejection.
- (23) The approval will take the form of an aid certificate, issued by the Ministry of Energy for one annual price period as determined by the Bulgarian Energy Regulator.
- (24) The aid certificate contains information on the name of the beneficiary, the type of facility he operates and its respective capacity, the amount of aid granted and the period of validity of the certificate. In the case of beneficiaries being granted further reductions on the contributions to RES financing, as described in recital (17) above, the aid certificate also stipulates the amount, representing the financing contribution due to be paid by the latter.
- (25) Aid in the form of further reductions is only paid out to beneficiaries once the latter have submitted a document demonstrating that the minimum contribution due as set out in the aid certificate has actually been paid.

- (26) The Ministry of Energy is under the obligation to monitor the implementation of the aid measure and to exercise preventive, continuous and ex-post control over beneficiaries. Checks for monitoring and control purposes are to be carried out in the course of the last three months of each price period, for which aid has already been approved.
- (27) If during the ex-post monitoring, an over-payment or under-payment of aid is recorded, the Ministry of Energy takes the necessary measures so that the respective over-payment is paid back immediately or compensation is received for the under-payment suffered. Risk of over- or under-payment could exist for example in the case of new undertakings that have been operating for less than one year and whose electricity costs are based on estimated figures rather than on historical data.
- (28) The Ministry of Energy keeps a public register of all the applications, the accepted ones as well as the rejected ones. The public register will contain information about the beneficiaries being granted aid, the type of aid that has been granted and its respective level.

2.2.4. Duration, granting authority, legal basis, budget and financing

- (29) The duration of the notified measure is from 1 August 2015 until 31 December 2020.
- (30) The granting authority is the Ministry of Energy.
- (31) The legal basis is the Ordinance on Reducing the Burden Related to the Cost of Energy from Renewable Energy Sources.
- (32) The total budget allocated to the notified measure is BGN 510 million (EUR 260.75 million), while the annual budget is estimated at BGN 102 million (EUR 52.15 million).
- (33) The aid measure is financed from the Electricity System Security Fund (the Fund). The establishment of the Fund is decreed by special provisions - Article 366 - of the Energy Law.
- (34) The Fund is registered as a separate legal entity accountable to the Ministry of Energy. It is governed by a management board chaired by a representative of the Ministry of Energy and has as board members representatives of Ministries of Finance, Water and Environment and two representatives of electricity producers.

2.2.5. Cumulation

- (35) Aid granted under the notified measure cannot be cumulated with other types of aid to cover the same eligible costs.

2.2.6. No new aid as long as past incompatible aid has not been recovered.

- (36) As indicated in recital (9) aid under the notified measure cannot be granted if the beneficiary still has at its disposal an earlier unlawful aid that was declared incompatible by a Commission Decision.

2.2.7. Other

- (37) The Bulgarian authorities have confirmed that no aid to reduce the costs for EIUs related to the financing of the support for electricity from renewable sources has been granted in the past.

3. ASSESSMENT OF THE MEASURE

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

- (38) Under Article 107(1) TFEU, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods, in so far as it affects trade between Member States, is incompatible with the internal market unless otherwise provided in the TFEU.
- (39) In the case at hand, EIUs are advantaged because they are being compensated for part of the costs of the surcharge levied on electricity consumers, which is used to finance support for renewable electricity. The measure is also selective because only some companies and only EIUs within certain specific sectors can benefit from it.
- (40) In its *Vent de Colère* judgment the Court of Justice recalled that "[t]he concept of 'intervention through State resources' is intended to cover, in addition to advantages granted directly by the State, those granted through a public or private body appointed or established by that State to administer the aid"⁶.
- (41) The notified support is financed through a Fund, which has been established by law and is under the direct control of the State through a management board comprised mostly of government officials. Beneficiaries have to apply for the subsidy to the Minister of Energy. The latter will verify whether the eligibility conditions set out in the law are fulfilled. The aid is therefore financed from State resources and imputable to the State.
- (42) The potential beneficiaries are all energy-intensive companies active in sectors listed in Annex 3 and Annex 5 of the EEAG. Hence, they are active in sectors in which trade between Member States takes place. The measure is therefore liable to distort competition and affect trade between Member States.

3.2. Lawfulness of the aid

- (43) The Bulgarian authorities confirmed that the notified measure will not be implemented before the approval of the Commission. Bulgaria has therefore complied with its obligations under Article 108 TFEU.

⁶ Case C-262/12, *Association Vent De Colère!*, EU:C:2013:851, para 20.

3.3. Compatibility of the aid

- (44) As the scheme compensates EIUs for (part of) the PSO surcharge used to finance support in favour of renewable electricity, the Commission has assessed the aid scheme on the basis of the EEAG, and in particular section 3.7.2 thereof ('Aid in the form of reductions in the funding of support for energy from renewable sources').
- (45) Points 185-186 of the EEAG provide that the aid should be limited to sectors that are exposed to a risk to their competitive position due to the costs resulting from the funding of support to energy from renewable sources as a function of their electro-intensity and their exposure to international trade. Accordingly, the aid can, as a general rule, only be granted if the company belongs to the sectors listed in Annex 3 EEAG. Companies belonging to sectors listed in Annex 5 EEAG are eligible in so far as a company has an electro-intensity of at least 20%. It follows from information provided by the Bulgarian authorities (see recital 8 above) that the aid will be granted to EIU in line with EEAG..
- (46) In addition, point 187 of the EEAG provides that Member States need to ensure 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.
- (47) Under the notified scheme, the Bulgarian authorities require a number of additional criteria and all these criteria apply equally to all beneficiaries. They stem from other legislative requirements, their obligation to tax and social security authorities, a control of administrative costs as well as certain obligations under State aid rules, in particular those relating to unlawful aid and cumulation requirements. The Commission therefore finds that the additional criteria are objective and transparent and do not discriminate between undertakings in a similar factual situation.
- (48) 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. In addition, point 189 provides for further limiting the amount of the costs resulting from the financing of support to renewable electricity to be paid at undertaking level to 4% of GVA provided that is needed and to 0.5% of GVA provided it is necessary and undertakings have electro-intensity of at least 20%.
- (49) The system Bulgaria has established complies with these conditions, as the maximum aid granted in the general case shall not exceed 85 % of the surcharge used to finance the support to renewable electricity. Only for a limited number of beneficiaries that are most exposed to the surcharge (see recitals 17-18), the additional reductions allowed under point 189 of the EEAG apply.
- (50) In order to ensure compliance with these conditions the Ministry of Energy will perform ex-ante and ex-post checks, ensuring the information submitted by beneficiaries as part of their application forms is factually correct and that the aid amounts granted do not lead to any overcompensation. If, it is demonstrated that a beneficiary has received aid exceeding what he is entitled to during a particular year, the Bulgarian authorities will recover the excess aid. Consequently, the

Commission finds that the notified measure complies with points 188 - 190 of the EEAG.

- (51) According to point 192 of the EEAG, the aid may be granted in the form of a reduction from charges or as a fixed annual compensation amount, or as a combination of the two. Bulgaria has explained that the aid will be granted as a reduction from charges through compensation from the budget, based on actual electricity consumption. Hence, point 192 of the EEAG is met.
- (52) Pursuant to Section 3.2.7 of the EEAG, Member States are required to publish certain information related to beneficiaries of aid no later than 1 July 2016. As explained in recital (28) the Minister of Energy shall keep a public register of submitted approved and rejected applications. Thus the transparency requirements under of the EEAG are complied with.

4. CONCLUSION

- (53) The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107 (3) (c) of the Treaty on the Functioning of the European Union.
- (54) If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Your request should be sent electronically to the following address:

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Yours faithfully
For the Commission

Vera JOUROVÁ
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