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<p>In the published version of this decision, some information has been omitted, pursuant to articles 30 and 31 of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, 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.44666 – Greece  
New operating aid scheme for the production of electricity from RES  
and HECHP**

Sir,

**1. PROCEDURE**

- (1) Following pre-notification contacts on 26 July 2016, the Hellenic Republic notified, pursuant to Article 108(3) of the Treaty on the Functioning of the European Union (TFEU), a new operating aid scheme for the production of electricity from renewable energy sources (RES) and cogeneration. The Hellenic Republic provided additional information on 20 September 2016.
- (2) On 23 August 2016, the Hellenic Republic waived its right under Article 342 of the TFEU in conjunction with Article 3 of the EEC Council Regulation No. 1/1958<sup>1</sup> to have the decision adopted in Greek and agreed that the decision be adopted and notified in English.

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<sup>1</sup> EEC Council: Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385).

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## **2. DESCRIPTION OF THE MEASURE**

### **2.1. National legal basis**

- (3) The national legal basis is Law 4414/2016 on a new support scheme for renewable energy sources (RES) and high-efficiency combined heat and power (HECHP) installations, published on 9 August 2016.

### **2.2. Background and objectives of the notified scheme**

- (4) The support scheme intends to incentivize electricity production from RES in order to contribute to the achievement of the target set by Directive 2009/28/EU on the promotion of the use of energy from renewable sources<sup>2</sup> at 20% share of energy from renewable sources on the EU overall gross energy consumption in 2020. In particular, it will help the Hellenic Republic meet its 2020 national target, set by that Directive at 18% share of energy from renewable sources on national final gross energy consumption.
- (5) Based on latest available data from Eurostat, in 2014 Greece's RES share on total final gross energy consumption was 15.32%, with electricity from renewable sources (RES-e) representing 21.92% of total electricity generation. Significant new investment is still required in order to reach the abovementioned national RES target. In terms of capacity, the gap is currently estimated in the order of 2,200 – 2,700 MW.
- (6) Such investment requires in turn additional funding because current and projected energy prices in Greece are not sufficient to support investment in renewable energy. Due to the production costs of green electricity and the current electricity market price level, investments in RES installations are unlikely to occur without aid.
- (7) Similarly, the notified support scheme offers the necessary incentives for the promotion of highly efficient combined production of heat and power (HECHP), according to Directive 2012/27/EU on energy efficiency.<sup>3</sup> The objective of this scheme is to promote primary energy savings from cogeneration, based on useful heat demand.

#### *2.2.1. The Greek electricity market*

- (8) The Greek electricity market (covering the mainland and all interconnected islands) is organised as a day-ahead wholesale market (the so called “mandatory pool”). The system incorporates two sub-markets that are simultaneously optimised, a forward wholesale market and a market for auxiliary services. All electricity generated and consumed in the interconnected system is traded on the forward market (with gate closure one day ahead of real time). The auxiliary services and reserves necessary for ensuring the quality and reliability of the

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<sup>2</sup> Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJ L 140, 5.6.2009, p. 16).

<sup>3</sup> Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (OJ L 315, 14.11.2012, p. 1).

system are traded on the market for auxiliary services. All electricity “sellers” (i.e. electricity generators, auto-producers and importers) are obliged to sell their electricity through the mandatory pool, which is available for every hour of the following day. All electricity “purchasers” (i.e. electricity suppliers, hydroelectric power plants with pumping storage capability, exporters and self-supplied customers – the “Load Representatives”) are obliged to purchase electricity in order to cover their needs for the following day (the expected consumption has to be specified for each hour of the following day). The sale and purchase of electricity is carried out exclusively within the mandatory pool, the sale of electricity through other means (e.g. bilateral arrangements) being prohibited.

- (9) In the non-interconnected islands 32 autonomous power systems currently operate without any wholesale electricity market (i.e. forward electricity market, day-ahead electricity market, intra-day electricity market, balancing market, etc.).
- (10) In all these autonomous power systems, the Public Power Corporation (PPC) is the only conventional power producer (using heavy oil or diesel as a fuel). There are several RES power producers (including a PPC subsidiary) and only one existing supplier (PPC) in all islands, except Crete where the market is open to other suppliers.
- (11) In all 32 systems, currently, neither the producers nor the suppliers submit daily offers for their production or for their customers’ loads. The dispatching of the units is done in order to achieve the lowest cost, maximizing at the same time the contribution of RES production, taking into account also the security of supply. The Network Operator in the non-interconnected islands is DEDDIE SA (Hellenic Distribution Network Operator).
- (12) As a result, in those systems there is no system marginal price but an estimated clearance price of energy. The estimation is done on a monthly basis, based on the variable costs of the conventional power units for each of all these autonomous power systems, pursuant to Law 4001/2011 and the Code of Operation of the non-interconnected islands.<sup>4</sup> PPC, as the only supplier, buys all the produced electricity (including the RES production in each system) at this price.
- (13) There is currently no intra-day electricity market in Greece. The Hellenic Republic is currently working on the development of the new electricity market model with the aim of integrating the Greek market in the European electricity market and allowing the long-term efficient operation of the electricity market in the country. The participation of RES and HECHP installations in the electricity market will take place during the transitional period only through the day-ahead market, where they will participate with zero-priced offers.
- (14) Greece is planning to implement a new electricity market model. As currently there is no liquid intra-day market in Greece, during the transitional period up to the implementation of this new market model, beneficiaries will not be subject to standard balancing obligations.

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<sup>4</sup> Decision no. 39/2014 of the Regulatory Authority for Energy. Electrical systems management code in non-interconnected islands.

### 2.3. Beneficiaries

- (15) The beneficiaries of the notified measure will be new renewable electricity generation installations and new high-efficiency cogeneration installations. In addition, existing installations benefitting from feed-in-tariffs under the previous support scheme for renewables and high-efficiency cogeneration may – under certain conditions – switch to feed-in premiums under the notified scheme for the remaining aid payment period.
- (16) The technologies that will be eligible for support under the notified measure are listed below:
- Onshore wind;
  - Small hydropower;
  - Solar photovoltaics (PV);
  - Biomass;
  - Biogas;
  - Solar thermal energy;
  - Geothermal energy;
  - Other Renewable technologies (e.g. wave and tidal energy);
  - Highly efficient cogeneration (HECHP).
- (17) The Hellenic Republic has confirmed that when granting aid to small hydropower installations, it will fully respect the provisions of Directive 2000/60/EC of the European Parliament and the Council<sup>5</sup> (the Water Framework Directive). All hydropower developments are required to obtain the relevant environmental permits prior to the granting of aid, including an approval by the competent river basin authority that the hydropower plants have been developed in accordance with Article 4(7) of the Water Framework Directive.
- (18) With regard to support provided under the notified scheme to plants using waste, the Hellenic Republic has confirmed that the waste hierarchy, as set out in the Directive 2008/98/EC of the European Parliament and of the Council<sup>6</sup> (the Waste Framework Directive), will be respected.
- (19) To that end, the Hellenic Republic will also set at 100 MW the cap for the overall installed capacity of installations burning landfill gas stemming from biodegradable waste disposed of in landfill sites, the cap includes the existing installations. Once that cap is reached no additional aid will be granted to new installations of that type. That cap has been set in accordance with the targets set under Council Directive 1999/31/EC.<sup>7</sup>

#### 2.3.1. Existing installations

- (20) Installations which are covered by a power purchase agreement concluded under the previous support scheme for RES and HECHP, and which have not been finally constructed and put into trial operation before 31 December 2017 will fall

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<sup>5</sup> Directive 2000/60/EC of the European Parliament and the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000, p. 1).

<sup>6</sup> 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).

<sup>7</sup> Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (OJ L 182, 16.7.1999, p. 1).

mandatorily under the conditions of the notified support scheme, instead of the conditions of the previous scheme. For wind, small hydropower and biomass/biogas installations, the above-mentioned deadline for putting the installation into trial operation is instead set to 31 June 2018, if this deadline is not met they will fall mandatorily under the conditions of the notified support scheme.<sup>8</sup>

- (21) In addition, plants covered by a power purchase agreement under the previous scheme with a capacity above 5 MW may opt for a voluntary transition from the previous scheme to the notified scheme, thus becoming fully subject to the conditions of the notified scheme for the remaining aid payment period.

#### *2.3.2. Firms in difficulty or subject to an outstanding recovery order*

- (22) The Hellenic Republic has committed to ensuring that firms in difficulty, as defined by the *Guidelines on State aid for rescuing and restructuring firms in difficulty*,<sup>9</sup> and those which are subject to an outstanding recovery order following a previous Commission decision declaring an aid measure illegal and incompatible with the internal market will not be eligible to receive support under the notified measure.

### **2.4. Form of the aid and level of support**

#### *2.4.1. Sliding premium for installations in the interconnected system*

- (23) For RES and HECHP installations in the Greek interconnected system, the aid under the notified scheme takes the form of a feed-in premium in addition to the price at which producers sell the produced electricity directly in the wholesale market. This premium will be guaranteed for the whole support period and will be calculated as the difference between an administratively pre-fixed price (the reference value) and the reference market price.
- (24) For photovoltaic installations with a capacity above 500 kW aid will only be granted on the basis of a competitive bidding process. Hence, the reference price for this category of installations will be determined through a competitive bidding process. However, an indicative levelised costs of producing energy (LCOE, expressed in € per MWh) will be calculated and used as the highest acceptable bid price during this bidding process.

##### *2.4.1.1. The reference market price*

- (25) The reference market price will be calculated as the corrected monthly weighted average value of the electricity. In particular the electricity price will be calculated as the hourly electricity production multiplied by the system marginal price. It will also take into account revenues and costs from other wholesale market mechanisms.

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<sup>8</sup> Both categories of projects will fall under a transitory period until the end of 2018, during which if they apply for State aid support, the conditions and the reference values under the notified scheme will be applied. Those projects, having already been granted aid, will be exempt from the obligation to participate in the bidding process.

<sup>9</sup> Communication from the Commission – OJ C 249, 31.7.2014.

- (26) The reference market price will be differentiated between controllable and non-controllable (intermittent) installations. The reference market price for non-controllable installations (e.g. wind, photovoltaic and small hydropower) will be calculated based on the weighted averaged production of each RES, while for all other RES technologies as well as for HECHP installations, the calculation will be done based on the average system marginal price. The latter methodology creates an incentive for controllable RES and HECHP installations to produce in hours with higher system marginal price.
- (27) A decision of the Minister for the Environment and Energy shall specify the specific method for calculating the reference market price for each RES and HECHP technology and the wholesale market mechanisms to be taken into account.
- (28) The different ways for calculating the reference market price by technology is transitional and will be re-evaluated during the annual review of the functioning of the new support scheme (see section 2.4.6 below) so as to assess its necessity.
- (29) After the implementation of the new market model (see recital (14) above), the reference market price will be calculated based on the revenues from selling electricity in the day-ahead and intraday markets.

#### 2.4.1.2. The reference value

- (30) The reference values for the remuneration of any particular technology will not be modified by the implementation of the reviewed methodology for the calculation of the reference market price.
- (31) Generators will earn money from selling their electricity on the market, but when the reference market price is below the reference value, generators will also receive a premium to cover the difference. The contracts for the payment of the feed-in premium will be two-way contracts for difference so that in the case the reference market price is above the reference value for a specific month/technology, the relevant generators will repay the difference to the RES Special Account.
- (32) The LCOE is determined separately for each category of RES taking into account the cost of project development as well as the supply and installation of the equipment (CAPEX, expressed in € per kW), the fixed and variable operational costs (OPEX, expressed as a percentage of the CAPEX), the expected electricity production and all other technical and accounting parameters that determine the costs and revenue of the relevant RES units. According to the Hellenic Republic, the typical cost and performance parameters constitute a representative depiction of the current RES and HECHP technologies. They reflect the maturity of the relevant technologies, grid connection costs and operational characteristics of installations in Greece. The calculations are based on data from the Ministry of Environment and Energy, members of the Working Group established to develop a new framework for the support of RES units in Greece, the Regulatory Authority for Energy and from the result of European studies conducted in the context of the technical assistance from the EU to the Greek government (TARES and TARES+). The assumptions used in the calculations are summarised in Table 1.

**Table 1. Typical cost and performance parameters.**

Technology-installation category	CAPEX	OPEX	Capacity factor
Wind installations in the interconnected system	1,250	2.7%	24.5%
Wind installations on the non-interconnected islands	1,450	3%	29%
SHP $\leq$ 3 MW	1,950	2.1%	36%
3 MW < SHP $\leq$ 15 MW	1,900	2%	36%
Special Rooftop photovoltaic program	1,250	1.2%	16%
Biomass $\leq$ 1 MW gasification	4,800	16%	90%
Biomass $\leq$ 1 MW other processes	3,900	21%	90%
Biomass 1-5 MW	3,100	24.5%	90%
Biomass >5 MW	2,650	25%	90%
Gas from landfills and biological sewage treatment installations $\leq$ 2 MW	2,000	18%	60%
Gas from landfills and biological sewage treatment installations > 2 MW	1,700	17%	60%
Biogas from anaerobic digestion $\leq$ 3 MW	4,500	20%	85%
Biogas from anaerobic digestion > 3 MW	4,200	20%	85%
Solar thermal stations without storage	3,450	2%	20%
Solar thermal stations with storage	4,700	2.2%	30%
Geothermal stations $\leq$ 5 MW	5,500	3.5%	85%
Geothermal stations > 5 MW	4,400	3%	85%
CHP installations $\leq$ 1 MW	1,300	7.7%	57%
1 MW < HECHP installations $\leq$ 5 MW	1,200	7.9%	63%
5 MW < HECHP installations $\leq$ 10 MW	1,100	7.7%	68%
10 MW < HECHP installations $\leq$ 35 MW	1,050	5.7%	74%
CHP installations >35 MW	800	5%	86%

- (33) The reference values for each category were calculated on the basis of the LCOE of a typical project in Greece. The relevant reference values are presented in Table 2. As set out in recital (60) below, the reference values may be amended by decision of the Minister for Environment and Energy.
- (34) The LCOE values include an internal rate of return between 7% and 10%, depending on the technology. Those values are set out in Table 2.

**Table 2: Reference values (RV) and internal rates of return (IRR)**

Technology-installation category	RV [€/MWh]	% project IRR
Wind installations in the interconnected system	98	9%
Wind installations on the non-interconnected islands	98	9%
SHP $\leq$ 3 MW	100	9%
3 MW < SHP $\leq$ 15 MW	97	9%
Special Rooftop photovoltaic program	110	10%
Biomass $\leq$ 1 MW gasification	193	9%
Biomass $\leq$ 1 MW other processes	184	9%
Biomass 1-5 MW	162	9%
Biomass >5 MW	140	9%
Gas from landfills and biological sewage treatment installations $\leq$ 2 MW	129	9%
Gas from landfills and biological sewage treatment installations > 2 MW	106	9%
Biogas from anaerobic digestion $\leq$ 3 MW	225	10%
Biogas from anaerobic digestion > 3 MW	204	9%
Solar thermal stations without storage	257	7%
Solar thermal stations with storage	278	9%
Geothermal stations $\leq$ 5 MW	139	10%

Technology-installation category	RV [€/MWh]	% project IRR
Geothermal stations > 5 MW	108	10%
HECHP installations ≤1 MW	110 – 116.6	10%
1 MW < HECHP installations ≤5 MW	101.7 – 108.2	10%
5 MW < HECHP installations ≤10 MW	95.7 – 102.2	10%
10 MW < HECHP installations ≤35 MW	89.7 – 96.2	10%
HECHP installations >35 MW	82.7 – 89.2	10%

- (35) For HECHP installations, the reference values are calculated on the basis of a methodology that involves a fixed part and a sliding value based on the nominal performance coefficient and the current natural gas supply price. The sliding premium for the remuneration of HECHP installations accounts for the variations in gas prices in order to normalize its impact on the overall level of support in terms of operating aid.
- (36) HECHP installations used in the agricultural sector and for district heating purposes will receive a higher compensation than other HECHP installations. To this end, the feed-in premium will be increased by 35% for agricultural HECHP and by 15% for district heating HECHP. The Hellenic Republic has proven that the higher compensation is justified by the higher costs for the connection to the natural gas grid and electricity grid borne by installations in the agricultural sector. The Hellenic Republic has estimated that additional cost to correspond to around 5% of overall costs for those installations. An additional 20% cost has to be added as agricultural and district heating installations need boilers and tanks with a higher rated capacity, in order to be able to store more energy and balance the system, this is linked to the typical load profiles for these uses. In addition, agricultural installations normally channel CO<sub>2</sub> emitted by the plant. To this end, cleaning equipment for the exhaust gases is needed, adding another 15%-20% to the total costs. Finally both for agricultural and for district heating HECHP, the number of operating hours is lower than for other HECHP installations.
- (37) Auto-producers can benefit from aid under the notified scheme for electricity injected into the grid up to 20% of their overall annual production. The Hellenic Republic has provided the calculations of the avoided electricity cost for auto-producers, based on the retail tariff for electricity. That avoided cost is maximum 95 €/MWh. In the case of HECHP the reference values can be lower than 95 €/MWh, but in those cases the avoided electricity cost is also lower as most of those installations use special supply agreements. The Hellenic Republic has demonstrated that the avoided electricity cost is normally lower than the reference values used for determining the level of the feed-in premium or feed-in tariff. The CAPEX and OPEX of auto-production plants are similar to those of plants selling the electricity directly on the market. The Hellenic Republic has demonstrated that providing aid for a maximum of 20% of the generated electricity ensures that the sum of the aid received, plus the avoided cost for the auto-consumed electricity, plus the market price of the electricity sold by the auto-producer does not exceed the relevant LCOE.

#### 2.4.2. Feed-in-tariffs for installations on non-interconnected islands

- (38) The Hellenic Republic has explained that a prerequisite for granting aid in the form of a premium is the existence of an electricity market entailing at minimum the participation of and provision of offers by both producers and suppliers, which is currently not the case on the Greek non-interconnected islands.



- (39) Therefore, due to the special market circumstances on the non-interconnected Greek islands, i.e. the absence of a wholesale market, new RES and HECHP electricity installations on them will receive the aid in the form of a fixed feed-in tariff instead of a premium.
- (40) When a previously non-interconnected island is interconnected to the mainland system, all RES and HECHP installations receiving support under the new scheme and exceeding the relevant technological capacity thresholds (i.e. 3 MW for wind and 500kW for other technologies) will be obliged to switch to the type of operating aid support that applies to the equivalent installations on the mainland (i.e. feed-in premiums), taking up in parallel the relevant responsibilities (e.g., balancing responsibilities) that are going to be applicable because of their direct participation in the electricity market.
- (41) Whenever a local daily electricity market with the participation of and provision of offers by both producers and suppliers is put into operation on a non-interconnected Greek island, all RES and HECHP installations under the new support scheme, exceeding the relevant technological capacity thresholds, will be obliged to switch from feed-in tariffs to feed-in premiums, along with taking up the relevant obligations and services that are arising from their direct participation in the local electricity market, as described in the Code of non-interconnected islands.
- (42) When a previously non-interconnected island is interconnected to the mainland or a local daily electricity market is put in operation, installations on that island will continue to receive the reference value that was applicable at the time they were first put into operation (see recital (61) below). The total duration of the operating aid, independently of its form, will not change.
- (43) Hybrid power stations in non-interconnected islands are power plants that utilise a storage system with controllable storage units and at least one form of RES power generation unit. Due to grid constraints in the non-interconnected islands, hybrid power stations are a way to increase RES penetration beyond the current 20% of yearly electricity demand that can be achieved with non-controllable RES. Under the notified scheme, hybrid power stations will receive aid only for their RES electricity production.
- (44) For electricity directly injected into the grid, hybrid power stations will receive the reference value applicable to the relevant RES installation. For the energy that comes from the storage system, hybrid power stations will receive a remuneration corresponding to the reference value applicable to the RES installation multiplied by a correction factor, set on the basis of the round-trip energy losses of the relevant storage system. The multiplying factor is set at maximum at 1.5<sup>10</sup> and can be reduced for each installation by decision of the Regulatory Authority for

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<sup>10</sup> According to the information submitted by the Hellenic Republic, the round-trip efficiency of small pumped storage power systems ranges from 55% to 70%. For systems based on batteries, the Hellenic Republic has indicated that their round-trip efficiency varies depending on the technology used, with different technologies being suitable to meet different needs (high temperature batteries for autonomous power systems requiring large capacities, lithium-ion batteries for small capacities requiring a fast response). The round-trip efficiency of battery systems ranges from 51% to 88% depending on the technology and use. The 1.5 maximum correction factor has been calculated as the reverse of the average round-trip efficiency of pumped storage power systems (around 65%).

Energy (RAE), depending on the storage technology and its roundtrip efficiency. The Hellenic Republic commits to notify separately any additional support to be granted (either by way of an amendment to the notified scheme, or by notifying a new support scheme) for the operation of those installations and not to grant them any further aid until a Commission decision authorizes it.

#### 2.4.3. Feed in tariffs for small scale installations

- (45) Under the notified scheme, RES demonstration projects<sup>11</sup> or installations with an installed capacity or maximum production capacity of up to 500 kW for all renewable technologies other than wind, and of up to 3 MW for wind parks, may also choose<sup>12</sup> to receive the aid in the form of a feed-in tariff (i.e. a fixed guaranteed tariff) instead of a feed-in premium.
- (46) The maximum production capacity represents the maximum quantity of electricity that an installation can inject into the grid at any given moment. The installed capacity is the sum of the rated powers of all the installation's production units. The maximum production capacity is used in the grid connection and feed-in tariff contracts.

#### 2.4.4. Management premium

- (47) RES and HECHP producers that participate in the electricity market are eligible to receive an additional management premium during the transitory period until the establishment of the new electricity market model and of a liquid intraday electricity market.
- (48) The management premium is considered necessary in order to incorporate the additional variable management costs of the participation of RES and HECHP installations in the electricity market, especially in the initial period where higher administrative costs are to be expected. Those costs have been estimated taking into consideration the marketing costs and the forecasting costs (subscription to forecasting databases and their use). Taking those costs into account and the typical production hours per technology, the management costs can be calculated as reflected in Table 3.

**Table 3. Marketing and forecasting costs per technology.**

Technology-installation category	Marketing costs	Forecasting costs	Management costs [€/MWh]
Wind installations below 10 MW	13,500 - 33,000	47,500 - 60,000	4.74 – 6.06
Wind installations above 10 MW	13,500 - 33,000	52,500 - 60,000	2.05 – 2.42
SHP	13,500 - 33,000	30,000	5.71 – 7.61
Biomass	13,500 - 33,000	30,000	4.57 – 6.09
Biogas from anaerobic digestion	13,500 - 33,000	30,000	4.83 – 6.45
HECHP below 1 MW	13,500 - 33,000	30,000	8.00 – 10.66
HECHP above 1 MW	13,500 - 33,000	30,000	2.18 – 2.91
Landfill /Sewage	13,500 - 33,000	30,000	3.42 – 4.57

<sup>11</sup> As defined in point 19(45) of the Energy and Environmental aid Guidelines.

<sup>12</sup> The enactment of this provision is foreseen upon the operation of the new electricity market model. Until that time the installations that fall under these limits can only receive the aid in the form of feed in tariff.

- (49) The management premium will be set at 3 €/MWh for wind installations up to 10 MW and at 2 €/MWh for all other RES and HECHP installations. Its value will not cover the total amount of the anticipated annual costs derived from forecasting.
- (50) The management premium will only be provided to RES and HECHP installations that participate in the market and whose feed-in premium is based on the administratively set reference values. This means that installations that are selected through a competitive bidding process have to integrate the market participation costs in their bids and are not going to be eligible for obtaining this management premium.
- (51) Moreover, no management premium will be provided for installations being represented in the market by the Cumulative Representation Body of Last Resort (see section 2.5 below).
- (52) The management premium can be reduced or fully abolished by a Ministerial Decision. The reduced level or the full abolishment of the premium will become effective immediately after the publication of the relevant Ministerial Decision (i.e. the management premium does not have a fixed duration and it is provided to the eligible producers only for the period in which it is in force).
- (53) A stepwise charge will be imposed based on the divergence of the production forecasts of RES and HECHP producers that will be differentiated per technology. This will be implemented through granting the management premium on a monthly basis only for the RES producers that achieve over a monthly period a forecasting accuracy that does not exceed a mean deviation tolerance band (i.e. in terms of mean absolute error) for the hours during which their plants have participated in the hourly electricity market schedule.
- (54) Tolerance limits will be defined by the Transmission System Operator (TSO) on the basis of the current forecasts and statistical divergence between forecasts and actual production. Within those limits no charge for the wrong forecasting of electricity production will be imposed.<sup>13</sup>
- (55) The objective of the mechanism is to incentivise better forecasting according to the technical capabilities and the rules of market participation of each technology. It will also have only a preparatory function until the full implementation of the new market model.
- (56) The management premium will be abolished with the establishment of the new electricity market model (see recital (14) above) and the uptake of balancing responsibilities by RES and HECHP producers.

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<sup>13</sup> The tolerance bands will be defined on the basis of the quotient between the absolute error, expressed as the difference between the forecasted energy and the energy injected, and the installed power. Additionally, each month a number of days of participation in the day-ahead market can be excluded from the calculation of the forecasting deviations.

#### *2.4.5. Negative prices*

- (57) According to the current provisions of the electricity transmission and trading codes,<sup>14</sup> the floor for priced offers is set at zero for imports and at the minimum variable cost for conventional thermal units. For the purposes of the notified scheme the floor for priced offers for RES and HECHP installation is considered equal to zero. Therefore, negative prices cannot occur in the Greek electricity market.
- (58) The Hellenic Republic has committed not to pay any support under the notified scheme for RES and HECHP generation at times when the price for electricity is zero for more than 2 consecutive hours.

#### *2.4.6. Monitoring*

- (59) A monitoring mechanism will be established in the form of a national technical committee entrusted with monitoring the performance of the support scheme, the market growth data, the methodology for the calculation of the reference market price, the performance of the forecasting accuracy mechanism, the management premium's level and the evolution of the financing conditions for new RES and HECHP installations. This committee will file a report with the Ministry of Environment and Energy every calendar semester.
- (60) The findings and recommendation in the report will be analysed by the Ministry of Environment and Energy in order to be considered in the relevant Ministerial Decisions to be adopted in the first quarter of each calendar year in order to amend the various parameters of the support scheme. Those decisions will set the reference values for the calendar year  $n + 2$ .
- (61) Upon the signature of an operating aid contract, the RES and HECHP generator will not secure the then current reference value. The reference value that will be applied is that in force when the installation is electrified. However, in order to avoid market uncertainty and high financing costs, any change of the reference value levels enters into force only after a period of up to 23 months.

#### *2.4.7. Cumulation*

- (62) The beneficiaries of the notified measure could also be eligible for investment aid under national financing instruments (e.g. national investment law).
- (63) Pursuant to the notified scheme, investment aid will be deducted from the operating aid. In particular in cases where investment aid is being granted (either as a grant or in any other form), the aid granted under the notified scheme will be recalculated at project level, so as to avoid overcompensation.
- (64) More specifically, the investment aid will be annualized by discounting it by a coefficient of recovery of the investment aid, calculated using the relevant internal rate of return mentioned in Table 2 and the remaining period of the operating aid. The resulting value will be divided by the annual quantity of

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<sup>14</sup> Code on the management of the Greek electricity transmission system, April 2016 and Code on the trading of electricity, November 2016.

electricity produced in order to result in a nominal charge on electricity produced to be deducted from the premium payment.

- (65) Under this approach, it is ensured that the investment aid received by a RES or HECHP installation leads to a reduction of the operating aid that the installation is entitled to receive by an equivalent amount.

## **2.5. Cumulative Representation Body of Last Resort<sup>15</sup>**

- (66) In order to facilitate the participation of RES and HECHP producers in the market, a special framework for cumulative representation bodies (i.e. entities that act as aggregators) will be introduced and developed. Those bodies will undertake on behalf of RES and HECHP producers obligations stemming from their participation in the market.
- (67) To cater for those cases in which cumulative representation bodies are temporarily unable to provide such services or RES or HECHP producers cannot contract the required services on the market, a Cumulative Representation Body of Last Resort (CRBLR) will be established. In the initial stage of the new support scheme, it is expected that that body will represent a significant number of RES and HECHP producers. The Representative Body is tasked to charge specific fees, which will increase over time.
- (68) For its services, the CRBLR will charge an amount corresponding to a given percentage of the reference market price, to be set by a Ministerial Decision to be issued maximum 3 months after the enactment of the law.
- (69) The notified scheme provides that the CRBLR will charge a lower percentage in the initial phase (taking into account the immaturity of the market) and higher percentages when the new electricity market model, and thus a liquid intra-day market, is in place.
- (70) The charges applied must in any event cover the typical marketing, deviation and balancing costs. In addition, an escalating surcharge is to be applied to the RES or HECHP generators that use those services.[...]\* This approach will ensure that with the implementation of the new market model producers will resort to the CRBLR only for emergency purposes and for a limited period of time.
- (71) The TSO and the RAE will continuously monitor the typical marketing costs, the typical deviation costs and the typical balancing costs.
- (72) The CRBLR is not subject to balancing responsibilities. It is going to act in a passive role in order not to influence the market.

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<sup>15</sup> The Cumulative Representation Body of Last Resort will provide independent RES and HECHP generators a guaranteed 'backstop' route-to-market. The Hellenic Republic does not consider the Cumulative Representation Body of Last Resort scheme to entail State aid. The setting up and operations of the Cumulative Representation Body of Last Resort have not been assessed by the Commission and are therefore outside the scope of the current decision.

\* Business secret.

## **2.6. Competitive bidding procedure**

- (73) In order to gain experience with competitive processes for the allocation of RES support in Greece, the notified scheme provides that aid to photovoltaic installations will be granted through a competitive bidding process to be held in 2016. The capacity tendered therein will amount to at least 40 MW. The installations selected through the competitive bidding process will receive an amount of aid corresponding to the bid submitted in the competitive bidding process (paid as bid). The maximum allowable bidding price will vary between 94 €/MWh and 104 €/MWh, depending on the size of the installation.
- (74) Successful bidders will be obliged to implement their projects within a certain timeframe. If the deadlines for the implementation of the projects are not respected, the beneficiaries will be subject to penalties to be specified in the decision launching the competitive bidding process to be published by the RAE.
- (75) The Hellenic Republic has committed to notify to the Commission the tender design for the allocation of operating aid to larger RES and HECHP power installations as of 1 January 2017. It has also committed not to grant any aid to RES and HECHP installations above 1 MW of installed capacity or maximum production capacity, or for the case of wind parks above 6 MW or 6 generation units, after 1 January 2017 and until approval by the Commission of the new tender design.

### *2.6.1. Opening up of tenders to non-domestic RES producers*

- (76) In order to remedy any possible discrimination under Articles 30 or 110 TFEU, the Hellenic Republic has committed to open each year the abovementioned competitive bidding process to RES and HECHP producers established in other European Economic Area (EEA) States up to a certain share, to be calculated according to the methodology described in section 2.6.1.1 below.
- (77) The final remuneration of imported RES production will be subject to evidence of the physical import of electricity from renewable sources (e.g., bilateral contracts with generator or importer, interconnection capacity rights, participation of import in the day ahead schedule, etc.), insofar as the presentation of such evidence is feasible.
- (78) Furthermore, the opening of the competitive bidding process to non-domestic producers can be subject to the conclusion of reciprocal cooperation agreements. The Hellenic Republic has indicated that they plan to start discussions on such agreements with neighbouring countries during 2016.

#### *2.6.1.1. Methodology for calculating the share of support to be opened to foreign producers*

- (79) The share of tendered out support to be opened to foreign producers will be calculated by multiplying by Greece's gross imports by the RES and HECHP share of electricity (referring to the previous year, or the last year available) for each of the neighbouring EEA countries from which electricity is imported to Greece. This percentage shall be further reduced by excluding from the calculations any imported RES and HECHP electricity which is not eligible for receiving operating aid in Greece (i.e. large hydro-power).

- (80) Based on this methodology and taking into account the data for 2015, an estimated share of around 3.5% of the total annual new RES and HECHP capacity would be expected to be open to producers from other EEA States.
- (81) The introduction of this provision is planned for 2017 on the basis of the most recent available data on imported RES and HECHP electricity and the new RES and HECHP capacity installed in 2016 and 2017 (i.e. the relevant share for 2016 will be added to the 2017 tenders).

## **2.7. Application procedure**

- (82) Beneficiaries not selected through tenders will be required to submit a standard application form which will include: (i) a declaration that no installation works have been carried out, (ii) information on the size of the undertaking, (iii) the amount of aid needed, (iv) the eligible costs, as well as (v) a counterfactual scenario which in case of large undertakings will have to be supported by documentary evidence. The credibility of the information submitted will be evaluated in order to confirm that the aid has the required incentive effect.
- (83) The Hellenic Republic has confirmed that aid will not be granted in cases where works on the project had already started prior to the aid application.
- (84) The exact terms for receiving the aid will be set out in standard contracts to be adopted via secondary legislation which the beneficiaries will have to sign. More specifically, beneficiaries eligible for feed-in premiums will have to sign a transaction contract and a contract for difference, while beneficiaries eligible for feed-in tariffs will have to sign a typical power purchase agreement.

## **2.8. Financing, budget and duration**

- (85) The duration of the notified scheme is 10 years (i.e. 2016-2025) and the Commission's approval is sought for the whole period for RES and HECHP installations with an installed capacity or maximum production capacity below 1 MW and for wind parks below 6 MW or 6 generation units.<sup>16</sup>
- (86) For projects of an installed capacity above 1 MW or for wind parks above 6 MW of installed capacity or with more than 6 generation units, the approval is sought only until the end of 2016, while as stated in recital (75) above, the Hellenic Republic has committed to notify to the Commission the tender design for the allocation of operating aid to those installations as of 1 January 2017.
- (87) The budget of the aid to RES and HECHP installations under the notified scheme is expected to reach a cumulative total of € 258 million for the period 2016 to 2020. For this calculation, a projection of the reference values was carried out. In case production costs and awarded bid prices are lower than those forecasts, there will be a corresponding reduction of the reference values and thus, the total budget will be reduced. For each year after 2020, the estimate for the required

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<sup>16</sup> Greece considers a typical wind turbine in the interconnected system to be of 3 MW of nominal capacity. Therefore, the scheme will limit the granting of aid on the basis of the administrative set reference value to wind parks of up to 6 typical generation units with a nominal capacity of 3 MW each.

annual budget will depend on the annual targets in the context of achieving the 2030 target.

- (88) The funding of the support scheme is mainly based on the special levy for RES generation (ETMEAR) to be paid by electricity consumers, which is levied on all electricity consumption.
- (89) The duration of the operating aid is 20 years for all RES and HECHP technologies, except small rooftop photovoltaic installations up to 10 kW and concentrated solar power installations for which the duration is set to 25 years. The longer aid period for small rooftop photovoltaic installations up to 10kW applies merely to households, while for concentrated solar power installations it was dictated by the special technical characteristics and the higher initial costs of project development. The Hellenic Republic has explained that generally accepted accounting rules, national taxation rules and the technical lifetime of those installations provide for a depreciation period of RES and HECHP installations between 20 and 25 years.

## **2.9. Transparency**

- (90) The Greek authorities commit to ensure the publication of information on a central State aid website after the enactment of the new support scheme. This information shall include: the full text of the approved aid scheme and its implementing provisions, or a link to it, the identity of the granting authority, the identity of the individual beneficiaries, the form and amount of aid granted to each beneficiary, the date of granting, the type of undertaking (SME/large company), the region in which the beneficiary is located (at NUTS level II) and the principal economic sector in which the beneficiary has its activities (at NACE group level).

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

### **3.1. Presence of State aid**

- (91) 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*".
- (92) Under the notified scheme, RES and HECHP generators receive support from the Greek Government for the electricity generated. The notified scheme favours the generation of electricity from RES and HECHP by the selected beneficiaries. Electricity is widely traded between Member States, for which reason the notified scheme is likely to distort the competition on the electricity market and affect trade between Member States. Therefore the notified measures constitute State aid in the meaning of Article 107 TFEU.

### **3.2. Legality of the aid**

- (93) The RES and HECHP scheme applies from 1 January 2016. The Hellenic Republic has stated that the scheme will be put into effect only after a final Commission decision on its compatibility with the internal market has been taken.



Thus, the Hellenic Republic has complied with the stand-still obligation set out in Article 108(3) TFEU.

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

- (94) The Commission notes that the notified scheme aims at promoting the generation of electricity from RES and HECHP. Consequently, the notified scheme falls within the scope of the Guidelines on State aid for environmental protection and energy 2014-2020 (EEAG).<sup>17</sup>
- (95) The scheme provides support to the beneficiaries by providing payments based on production output over a certain period of time after the original investment. The Commission has therefore assessed the notified measures on the basis of the general compatibility provisions of the EEAG (set out in section 3.2. thereof) and the specific compatibility criteria for operating aid granted for electricity from renewable energy sources (section 3.3.2.1. of the EEAG).

#### *3.3.1. Objective of common interest*

- (96) The aim of the notified aid measure is to help the Hellenic Republic achieve the renewable energy targets set by the EU as part of its 2020 strategy, in particular to meet its national target of an 18% share of energy from renewable energy sources in the national gross final consumption by 2020 (see recital (4) above).
- (97) Additionally, the measure aims at increasing energy-efficiency, by supporting HECHP (see recital (7) above). This is in line with the Union's objective of saving 20 % of the Union's primary energy consumption by 2020.
- (98) The Commission considers that the notified scheme is clearly aimed at an objective of common interest in accordance with Article 107(3) of the Treaty.

#### *3.3.2. Need for State aid and appropriate instrument*

- (99) 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*".
- (100) For the notified scheme, the Hellenic Republic has demonstrated that without the aid there would be a significant risk to miss the renewable energy target. The RES share in the total gross energy consumption in 2014 was 15.32%. Significant new investments are required in order to meet the national RES target in 2020. The Hellenic Republic has provided calculations demonstrating that the levelised cost of electricity production from RES and HECHP is still significantly higher than the market price (see Table 1 and Table 2 above).
- (101) On the basis of these estimates, the Commission concludes that, due to persistent negative externalities, large scale deployment of renewable energy sources and HECHP installations would not be financially viable without State aid.

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<sup>17</sup> OJ C 200, 28.6.2014, p. 1

- (102) Point 27(c) of the EEAG stipulates that in order to be deemed compatible State aid measures must be an appropriate policy instrument to address the objective of common interest.
- (103) According to point 116 of the EEAG, in order to allow Member States to achieve their national energy and climate change targets, the Commission presumes aid to energy from renewable sources to be appropriate and have limited distortive effects provided all other compatibility conditions are met.
- (104) Point 145 of the EEAG provides that State aid may be considered an appropriate instrument to finance energy-efficiency measures, independently of the form in which it is granted.
- (105) Compliance with all other compatibility conditions is assessed in Sections 3.3.3 to 3.3.6 below. Consequently, the Commission considers that for the notified scheme the aid is necessary and that it is an appropriate instrument to address the objective of common interest.

### *3.3.3. Incentive effect*

- (106) In line with point 49 of the EEAG, the incentive effect occurs if the aid induces the beneficiaries to change their behaviour towards reaching the objective of common interest which they would not do without the aid.
- (107) The Commission notes that in the absence of aid renewable energy technologies and HECHP installations 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 determines the beneficiaries to change their behaviour and invest in renewable energy and HECHP projects (see Table 1 and Table 2).
- (108) As mentioned in recital (82), the Hellenic Republic confirmed that the applicants will have to fill in an application form to receive support and that applications for aid must be submitted prior to starting works on the project. The Commission notes that the notified scheme complies with the provisions in points 50 and 51 of the EEAG.

### *3.3.4. Proportionality*

- (109) 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.
- (110) The Commission assessed proportionality of the aid under the provisions of Section 3.3.2 of the EEAG on operating aid to energy from renewable sources. In addition, according to point 151 of the EEAG, operating aid for high-efficiency cogeneration plants may be granted on the basis of the conditions applying to operating aid for electricity from renewable energy sources when the costs for producing a unit of energy in cogeneration plants is higher than its market price. Greece has demonstrated that the LCOE for HECHP installations exceeds the market price for electricity (see recitals (33) and (34) above).
- (111) As described in recitals (23) to (29) above, under the support scheme and until the full implementation of competitive bidding processes, aid to installations in the

interconnected system with an installed electricity capacity equal to or above 500 kW, or 3 MW for wind power, will be granted in form of a feed-in premium. This is in line with the requirement of point 124(a) of the EEAG.

- (112) As set out in recitals (45) and (46) above, the aid will take the form of a feed-in tariff for installations with an installed electricity capacity below those thresholds and demonstration projects, as allowed by point 125 of the EEAG. In fact, as set out in section 2.4.2 above, there is currently no electricity market in non-interconnected islands. Therefore, point 124(a) of the EEAG providing that aid has to be granted as a premium on top of the market price is not applicable, as no markets (and consequently no market price) exist. Also point 124(b) on standard balancing responsibilities is not applicable to those installations, as no liquid intra-day markets exist. Finally, point 124(c) is not applicable because negative prices cannot occur (see recital (12)).
- (113) As per point 124(b) of the EEAG, in the absence of a liquid intra-day market in Greece, beneficiaries do not need to be subject to standard balancing responsibilities. The notified scheme ensures that until a liquid intra-day market is put into place, RES and HECHP installations will need to provide an optimal accurate forecasting of the declared injected power (see recital (53) above).
- (114) For installations with an installed electricity capacity equal to or above 500 kW, or 3 MW for wind power, located either in the interconnected system or non-interconnected islands on which local daily markets exist, the support will be set to zero in case the system marginal price in the day-ahead market is zero for two or more consecutive hours (see recitals (57) and (58) above). The Commission considers that to comply with point 124(c) of the EEAG.
- (115) As indicated in recital (24) above, aid is granted to photovoltaic installations above 500 kW by means of a competitive bidding process, in which the relevant LCOE is used to set the highest acceptable bid price. According to point 126 of the EEAG, aid granted in the context of non-discriminatory competitive bidding processes is presumed to be proportionate. In any event, aid to photovoltaic installations above 500 kW is also capped to the relevant LCOE, therefore complying with point 131 of the EEAG.
- (116) As specified in point 128 of the EEAG, in the absence of competitive bidding procedures, the Commission assesses proportionality of the aid under the provisions of point 131 of the EEAG.
- (117) Point 131(a) of the EEAG states that the aid per unit of energy must not exceed the difference between the LCOE for the relevant technology and the market price of the form of energy produced. As indicated in recital (33) the Hellenic Republic has used the LCOE as basis for calculating the reference value to be paid for each supported technology. In addition, the management premium described in recitals (47) to (56) is below the estimated marketing and forecasting costs described in Table 3 which it is intended to cover. As indicated in recital (56), the management premium will be abolished once the new market model is established. This is considered to comply with the aforementioned provision.
- (118) As mentioned in recital (36), an additional remuneration of 35% or 15% is provided for agriculture and district heating HECHP respectively. The Hellenic

Republic has provided a justification for this additional remuneration which is considered justified.

- (119) As mentioned in recital (37), auto-producers can benefit from support under the scheme for up to 20% of their produced energy. As explained above, that excludes overcompensation also for auto-producers, in compliance with point 131(a) of the EEAG.
- (120) As mentioned in recital (43), an additional remuneration of up to 50% over the reference value is granted to hybrid power stations in non-interconnected islands for the energy that comes from the storage system. The RAE will evaluate all applications and determine the additional remuneration. The additional remuneration covers only the losses due to the storage of energy. Therefore also when adding that additional remuneration, the aid per unit of electricity injected into the grid does not exceed the difference between the relevant LCOE and the market price of electricity, in compliance with point 131(a) of the EEAG.
- (121) Point 131(b) of the EEAG allows a normal return on capital to be included in the LCOE. As indicated in recital (34), the Hellenic Republic has calculated returns on capital between 7% and 10% for the different technologies. This appears to be in line with rates of return of renewable energy and high efficiency cogeneration projects recently approved by the Commission.<sup>18</sup>
- (122) Point 131(c) of the EEAG provides that the production costs are to be updated regularly, at least every year. As indicated in recitals (59) to (61) above, the Hellenic Republic will put in place a monitoring mechanism to review at least on an annual basis the production costs for all categories and will update the applicable reference values accordingly.
- (123) Point 131(d) of the EEAG states that aid will only be granted until the plant has been fully depreciated. As indicated in recital (89), the duration of the aid is 20 years for all RES and HECHP technologies, apart from small photovoltaic installations up to 10 kW and CSP installations for which the duration is set to 25 years. As explained in the abovementioned recital, those duration periods do not exceed depreciation of the relevant installations.
- (124) In light of the above, the Commission concludes that remuneration granted satisfies the conditions of point 131(a), (b) (c) and (d) of the EEAG and is, therefore, proportionate in the meaning of point 69 of the EEAG.

#### *3.3.5. Distortion of competition and balancing test*

- (125) 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.

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<sup>18</sup> See for example the decisions in cases SA.38758, SA.38759, SA.38761, SA.38763, SA.38812, SA.38796, and SA.43756.

- (126) 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 indicated in recital (110), according to point 151 of the EEAG, operating aid for high-efficiency cogeneration plants may be granted on the basis of the conditions applying to operating aid for electricity from renewable energy sources when the costs for producing a unit of energy in cogeneration plants is higher than its market price. Greece has demonstrated that the LCOE for HECHP installations exceeds the market price for electricity (see recitals (33) and (34) above).
- (127) In the present case, the Commission considers that aid to renewable energy and HECHP 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 (see recitals (109)-(124)).
- (128) Moreover, as set out in recital (22), the Hellenic Republic has committed not to grant any aid to firms in difficulty or to those which are subject to an outstanding recovery order following a previous Commission decision declaring an aid measure illegal and incompatible with the internal market, in compliance with points 16 and 17 of the EEAG.
- (129) Consequently, the Commission concludes that the distortion of competition caused by the notified scheme is balanced by the positive contribution towards common policy objectives.

#### *3.3.6. Transparency*

- (130) Point 104 of the EEAG requires Member States to ensure the transparency of the aid granted, by publishing certain information on a comprehensive State aid website.
- (131) The Commission notes that the Hellenic Republic has committed to ensure the transparency of the aid granted and ensure the publication of information pursuant to point 104 of the EEAG on a central State aid website, as set out in recital (90) above.

#### *3.3.7. Other provisions of Union law*

##### *3.3.7.1. Articles 30 and 110 TFEU*

- (132) As set out 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. 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 measure complies with Articles 30 and 110 TFEU.
- (133) According to the case-law, a charge which is imposed on domestic and imported products according to the same criteria may nevertheless be prohibited by the Treaty if the revenue from such a charge is used to support activities which specifically benefit the taxed domestic products. If the advantages which those products enjoy wholly offset the burden imposed on them, the effects of that charge are apparent only with regard to imported products and that charge

constitutes a charge having equivalent effect to custom duties, contrary to Article 30 of the Treaty. If, on the other hand, those advantages only partly offset the burden borne by domestic products, the charge in question constitutes discriminatory taxation for the purposes of Article 110 of the Treaty and will be contrary to this provision as regards the proportion used to offset the burden borne by the domestic products.<sup>19</sup>

- (134) If domestic electricity production is supported by aid that is financed through a charge on all electricity consumption (including consumption of imported electricity), then the method of financing, which imposes a burden on imported electricity not benefitting from this financing, risks having a discriminatory effect on imported electricity from renewable energy sources and HECHP installations and thereby violate Articles 30 or 110 of the Treaty.<sup>20</sup>
- (135) As described in recital (88), the funding of the support scheme is based on the special levy for RES generation (ETMEAR) to be paid by electricity consumers, which is levied on electricity consumption.
- (136) The Hellenic Republic has committed to open up each year the RES and HECHP competitive bidding process for producers established in other European Economic Area (EEA) or in countries with which the European Union has concluded trade agreements to the extent and under the conditions set out in recitals (76) to (81) above.
- (137) The Commission considers the partial opening of the tenders to remedy any discrimination against producers of green electricity in other Member States, under Articles 30 and 110 TFEU.

#### 3.3.7.2. Environmental legislation

- (138) As set out in recital (17), when granting aid to small hydropower installations, the Hellenic Republic will fully respect the provisions of the Water Framework Directive, as requested by point 117 of the EEAG.
- (139) As set out in recitals (18) and (19), the Hellenic Republic has also taken measures to ensure that aid granted under this scheme does not lead to circumvention of the waste hierarchy, in compliance with point 118 of the EEAG.

#### 3.3.8. *Conclusion with regard to the compatibility of the measure*

- (140) 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 and that therefore the aid is compatible with the internal market on the basis of the EEAG.

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<sup>19</sup> Joined Cases C-128/03 and C-129/03 AEM, EU:C:2005:224, paragraphs 44 to 47; Case C-206/06 Essent, EU:C:2008:413, paragraph 42.

<sup>20</sup> Case 47/69 *France v Commission*, EU:C:1970:60, paragraph 20.

#### **4. AUTHENTIC LANGUAGE**

(141) As mentioned under Section 1 of this decision, the Hellenic Republic has waived its right to have the decision adopted and notified in Greek. Therefore, the authentic language of this decision is English.

#### **5. CONCLUSION**

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

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site:

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Yours faithfully  
For the Commission

Margrethe VESTAGER  
Member of the Commission