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**Subject: State Aid SA.35079 (2013/N) – Ireland
RES-E support programme – modification**

Sir,

1. Procedure

- (1) By letter dated 25 September 2007, the Commission considered the “RES-E support programme” (SA.20249 – N 571/2006, also referred to as “REFIT-1 programme”), as compatible with the Treaty on the Functioning of the European Union (hereinafter “TFEU”)¹.
- (2) By an electronic notification validated 18 July 2013, registered at the Commission on the same date, Ireland has notified a modification of the above-mentioned scheme. This had been preceded by informal pre-notification contacts which Ireland had initiated in July 2012.

2. Description of the aid

2.1 Description of the original aid measure

¹ With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the TFEU. The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 107 and 108 of the TFEU should be understood as references to Articles 87 and 88, respectively, of the EC Treaty where appropriate.

Mr. Eamon Gilmore T.D.
Minister for Foreign Affairs,
Department of Foreign Affairs
80, St. Stephen's Green,
Dublin 2,
IRELAND

- (3) The scheme's objective is to increase the contribution of renewable energy sourced electricity (hereinafter "RES-E") to Ireland's total electricity consumption by 1,450 MW.
- (4) To this effect, aid is granted in the form of payments to retail electricity suppliers who enter so-called Power Purchase Agreements (hereinafter "PPA") with selected producers of RES-E. Under a PPA, the supplier undertakes to purchase all the output from a selected new RES-E plant at contract prices which are fixed between the RES-E producer and the supplier at the commencement of each individual contract for 15 years, irrespective of the open market price. For every kWh purchased under the PPA, the supplier will receive a so-called REFIT (Renewable Energy Feed in Tariff) payment from a fund.
- (5) The selected RES-E producers were to be awarded "letters of offer", confirming to suppliers that they would be entitled to REFIT payments in return for entering PPAs with the selected producers. The producers eligible to receive a letter of offer were those who produce RES-E from small-scale hydro, large scale wind, small scale wind and biomass. In order to be eligible, the RES-E producers had to have a planning permission and a grid connection offer for the plant concerned.
- (6) Access to the programme was granted to RES-E producers from the date of the previous Commission decision until 31 December 2009, on a "first come, first served" basis within the limit of the quantitative capacity of 1,450 MW. Once access was granted, the support was intended to continue for 15 years. A final backstop date was set for the 31 December 2024 for legal certainty and budgetary reasons, meaning that no REFIT payments would be made beyond that date.
- (7) The national legal basis of the aid measure is the Electricity Regulation Act 1999.

2.2 Notified modification

- (8) The scheme's modification which was notified by Ireland consists in the postponement of the backstop date on which all payment of support is meant to elapse. While under the current scheme, the backstop date is the 31 December 2024, Ireland intends to put it back to the 31 December 2027. This shall be implemented through a Statutory Instrument (S.I.).
- (9) Ireland has confirmed that the modification does not mean that new producers would be given access to the REFIT-1 programme, since eligibility remains limited to those producers which were selected during the period between the Commission decision and the 31 December 2009. Ireland has also confirmed that for all producers which have been selected, support would never exceed the 15-year support period.
- (10) With the backstop date of 31 December 2024, selected RES-E plants would have needed to be connected and operational by the 31 December 2009 in order for the respective suppliers to receive 15 years of support. By postponing the backstop date to the 31 December 2027, the full 15-year support will also be paid to RES-E plants which have been connected between the 31 December 2009 and the 31 December 2012.

- (11) According to Ireland, the postponement is due to unexpected delays in the connection to the grid, sometimes amounting to several years, for as many as 65 projects. Ireland stressed that the projects concerned are key to achieving its 2020 targets under 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/EC².
- (12) Given that RES-E plants are typically built in rural areas where the grid is relatively weak, the grid needed to be reinforced in a significant number of areas, which did not happen in time.
- (13) In addition, some of the projects had submitted planning permissions to gain access to the REFIT-1 programme which subsequently expired. The producers had to apply for the extension of their planning permissions, which triggered further delays in building the plants.
- (14) Other producers faced difficulties in obtaining financing from banks, which according to Ireland was partly due to the economic downturn. Being granted access to the REFIT-1 programme was intended to – and in most cases did – enable producers to obtain financing, but Ireland states that there were difficulties in some cases. Finally, some projects suffered delays simply in obtaining building components.
- (15) This in effect meant that while all these RES-E producers had already been selected (they had submitted a planning permission and a grid connection *offer*), they had not been connected by the 31 December 2009, which was the pre-condition receiving for 15 years of support by the 31 December 2024.
- (16) According to Ireland, maintaining the original backstop date would therefore result in shorter durations of support for the projects concerned. However, the projects concerned had business models based on 15 years of REFIT-1 support. If the business model were to change from a 15-year support period to a shorter support period, the projects concerned may be unable to make a normal rate of return and to achieve a financial close, in particular as without the change in the backstop date, the support period could be reduced to as low as 12 years.
- (17) Finally, some of the projects have not been able to obtain the grid connection even by the 31 December 2012. This means that, even with the backstop date being set at the 31 December 2027, these projects will not be able to benefit from the full 15-year support period. Ireland is aware of this fact, but has nevertheless opted for the 2027 date in order to establish legal certainty and in order not to have the REFIT-1 programme prolonged indefinitely. According to Ireland, the projects concerned will have to consider whether or not they wish to proceed with their investments with a support period that is shorter than 15 years, if the financial close then could still be realised.

² OJ L 140, 5.6.2009, p. 16.

3. Assessment of the aid

3.1 Existence of aid and legality

- (18) In its previous decision, the Commission concluded that the aid paid out under the REFIT-1 programme fell under the provisions of Article 107(1) of the TFEU (recital 37 of the decision).
- (19) Ireland has fulfilled their obligation under Article 108(3) of the TFEU by notifying the modification prior to its implementation.

3.2 Compatibility with the Internal Market

- (20) The Commission assessed the notified alteration on the basis of the Community Guidelines on State aid for environmental protection of 2008 (hereinafter “EAG”)³, and in particular point 3.1.6.2 thereof. To the extent that RES-E has been generated from biomass and to the extent that biomass consists of agricultural products, the Commission also assessed the notified alteration based on the Community Guidelines for State aid in the Agriculture and Forestry Sector 2007 – 2013 (hereinafter “AFG”)⁴.
- (21) Ireland wishes to postpone the backstop date, which currently stands at the 31 December 2024, to the 31 December 2027.
- (22) The Commission notes that the above-mentioned modification is the only change to the existing aid measure.
- (23) The Commission considers that this modification will not change the favourable assessment made in its previous decision.
- (24) Indeed, while the scheme was originally assessed under the Community Guidelines on State aid for environmental protection of 2001⁵, point 204 of the EAG of 2008 requires the Commission to “apply these Guidelines to all notified aid measures in respect of which it is called upon to take a decision after the Guidelines are published in the *Official Journal*”. However, the Commission finds that the amended scheme also complies with the EAG, and in particular section 3.1.6.2 thereof.
- (25) Point 109 (a) of the EAG allows for “operating aid to compensate for the difference between the cost of producing energy from renewable sources, including depreciation of extra investments for environmental protection, and the market price of the form of energy concerned”. In its decision of 25 September 2007, the Commission concluded that the compensation was indeed limited to covering the difference between the production cost of the RES-E from the respective technologies and the market price of electricity in Ireland (recitals 42 *et seq.* of the

³ OJ C 82, 1.4.2008, p. 1. With reference to point 50 of the EAG, the Commission reminds the Irish authorities that the development of small-scale hydropower installations should be in accordance with the principles set out in the Water Framework Directive (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, 22.12.2000, p. 1).

⁴ OJ C 319, 27.12.2006, p. 1.

⁵ OJ C 37, 3.2.2001, p. 3.

decision). Moreover, the Commission found that the aid would be limited to covering plant depreciation (recital 44 of the decision).

- (26) At the time, the Commission held that these figures were unlikely to change over the whole duration of the scheme: For producers, the main costs were capital costs, and the revenues would be the fixed PPA prices, which would remain the same over the 15 years once the initial investment had been made (recital 45 of the decision). For the suppliers, the same is true as their direct costs are reflected by the fixed PPA prices.
- (27) This is also true for the 65 projects affected by the delays in the connection to the grid: Their costs are capital costs incurred for the necessary investment, their prices are or will be the fixed PPA prices.
- (28) As stated above, the projects are based on business models which need 15 years of support. The fact that the backstop date will be set at 31 December 2027 instead of 31 December 2024 does not mean an extension of the 15-year support period, but rather that the projects which are delayed by a maximum of three years can still receive 15 years of support. It is unlikely that the economics of RES-E production would have fundamentally changed, as the main cost elements still reflect the situation at the time the projects were selected. Therefore, the Commission considers that the assessment made in the previous decision is still valid.
- (29) Also, the RES-E plants are not eligible for investment aid (see recital 24 of the previous decision), which is in line with point 109 (b) of the EAG.
- (30) The Commission is satisfied that the incentive effect of the support scheme will not be put into question by the postponement of the backstop date. Under the current situation, RES-E generators who were not connected to the grid by the 31 December 2009 were not operational in terms of the needs of the electricity suppliers. With a backstop date postponed to the 31 December 2027, electricity suppliers would only get the full 15 years of support as foreseen in the business models, but this would not imply an extension of this period itself. A shorter support period would jeopardise the profitability of the projects and could therefore put into question their realisation.
- (31) As regards RES-E generated from biomass, the Commission has assessed the aid in line with the AFG. Under point 62 of the AFG, the EAG are declared applicable to the agricultural sector for aid in favour of environmental protection that is not investment aid. No investment aid is granted under the notified scheme. As the Commission already found that the conditions of the EAG have been met in the first place (see recitals (23) to (29) above), the same conclusion applies to the aid concerning RES-E from biomass.

4. Decision

The Commission has accordingly decided:

that the notified amendment to the scheme SA.20249 (N 571/2006) “RES-E support programme” meets the criteria for compatibility with the TFEU, in accordance with Article 107(3)(c).

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Your request should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
State Aid Greffe
B-1049 Brussels
Fax No: +32 2 29 61242

Yours faithfully,
For the Commission

Cecilia MALMSTRÖM
Member of the Commission