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**Subject: State Aid SA. 41998 (2015/N) – Slovenia**  
**A) Support to electricity from renewable energy sources and combined heat and power installations, and**  
**B) Support for electro- intensive users in the form of reductions in electricity support scheme contributions**

Sir,

**1. PROCEDURE**

- (1) The Slovenian authorities notified the above-mentioned measure to the Commission on 27 May 2015 pursuant to Article 108(3) of the Treaty on the Functioning of the European Union ('TFEU'). The Slovenian authorities provided further information to the Commission on 20 August 2015, 13 November 2015, 23 February 2016, 17 May 2016, 7 July 2016 and 29 August 2016.

**2. DETAILED DESCRIPTION OF THE MEASURE**

**2.1. Background and objectives of the notified scheme**

- (2) The notified measure constitutes an amendment to a support scheme to support electricity from renewable energy sources ('RES') and combined heat and power ('CHP') which was approved in Commission decision *SA.28799 Support for*

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*production of electricity from renewable energy sources and in co-generation installations.*<sup>1</sup>

- (3) The notified measure seeks to implement a number of amendments in respect of that approved support scheme. There are two main facets to these amendments labelled as 'Part A' and 'Part B' below. Specifically Slovenia proposes:
- A. Amendments to the approved RES and CHP support scheme's structure in the form of:
    - i. The introduction of competitive tenders to select beneficiaries rather than automatic eligibility;
    - ii. The introduction of a payment mechanism based on market premia for installations with an installed capacity over 1MW rather than the previous feed-in tariff model; and
    - iii. The introduction of an option to offer support to wood biomass facilities that are depreciated and would for this reason otherwise not be eligible under the scheme if, owing to the price of wood biomass, their production costs exceed the market price for electricity.
  - B. Amendment to the approved scheme through the introduction of a reduction in the contribution to the support scheme which energy-intensive users ('EIUs') are required to make.
- (4) The objectives of Part A, the support scheme, are described in detail in Commission decision *SA.28799 Support for production of electricity from renewable energy sources and in co-generation installations*.<sup>2</sup> These objectives remain unchanged. The amendments described under points (i) and (ii) above are designed to bring the scheme into compliance with those parts of the *Guidelines on State aid for environmental protection and energy 2014-2020* ('EEAG')<sup>3</sup> which come into effect from 1 January 2016 and 1 January 2017. Point (iii) will extend the scope of the eligible beneficiaries to include depreciated wood biomass installations. Otherwise, the objectives of the support scheme remain unchanged.
- (5) The objective of Part B, the reduction in contributions to the support scheme for EIUs, is to ease the burden of the support scheme's costs on those undertakings which are most affected by it because of their heavy reliance on electricity for the conduct of business in their sector.
- (6) Most of these large industrial consumers compete on the global markets and so cannot transfer to their customers the increase in their costs related to the support of renewable energy sources without jeopardising their international competitive position compared to non-EU competitors which face less stringent

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<sup>1</sup> OJ C 285, 26.11.2009.

<sup>2</sup> Recitals 4-6.

<sup>3</sup> Communication from the Commission – OJ C 200, 28.6.2014.

environmental protection obligations. This subsequently could impact on the financing of the support scheme.

## **2.2. National legal basis**

- (7) The national legal basis of the combined notified measure is comprised of:
- The Energy Act – EZ 1 (UL RS; Official Gazette of the Republic of Slovenia No 17/2014) (hereinafter, the "EZ-1");
  - Decree on the method of determining and calculating the contribution for ensuring support for the production of electricity from high-efficiency cogeneration and renewable energy sources (Official Gazette of the Republic of Slovenia, No. 46/2015); and
  - Draft Decree on support for electricity generated from renewable energy sources and from high-efficiency cogeneration.

## **2.3. Part A: The support scheme for promoting the production of electricity from RES and CHP installations**

- (8) The notified measure will put into effect the changes outlined in recital (3) above to the support scheme approved in Commission decision *SA.28799 Support for production of electricity from renewable energy sources and in co-generation installations*. Under that approved measure, aid to RES and CHP installations took the form of either:
- A guaranteed purchase price for electricity, i.e. a feed-in tariff; or
  - A top-up to the market price.
- (9) For RES installations with installed capacity above 5MW and CHP installations with installed capacity above 1 MW the aid could only be granted as a top-up to the market price. For smaller installations below these thresholds, beneficiaries had a choice between the feed-in tariff and the top-up payment.
- (10) The notified measure replaces this system with a market premium for all eligible installations over 500kW from 2016. New installations below 500kW will continue to have the option of the feed-in tariff.
- (11) The EZ-1 provides that support is possible for installations with an installed capacity of over 1MW solely in the form of a market premium. A 1MW threshold also exists for CHP, above which aid can only be granted in the form of a market premium. However, the Slovenian authorities have committed to ensuring that the public tender announcements which give notice of the tender will make clear that all installations above 500kW will only be eligible to apply for a market premium. Thereafter, Slovenia will amend Article 372(6) of EZ-1, the provision which deals with the eligibility threshold, when next the EZ-1 is amended for any other reason in order to reflect this requirement in law.
- (12) Slovenia has also committed to respecting the requirements of 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 (the

Water Framework Directive'),<sup>4</sup> in particular Article 4(7) thereof which lays down criteria applicable to the grant of consent for new modifications to water bodies.

- (13) Similarly, Slovenia has committed to respect for the waste hierarchy under Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives ('the Waste Framework Directive').<sup>5</sup> Slovenia also committed not to circumvent the waste hierarchy when granting aid for energy sources using waste

#### **2.4. Part B: Reduction in support scheme contributions for EIUs**

- (14) Article 378(1) of the EZ-1 introduces a reduction in the support scheme contribution for companies whose principal activity is in an electro-intensive sector contained in Annex 3 of the EEAG. Such undertakings will receive a 70% reduction on their support scheme contribution.
- (15) Reductions are also made available to companies in the sectors on Annex 5 of the EEAG whose electro-intensity exceeds 20%. Contributions to the support scheme from these undertakings will be limited to 4% gross value added. All eligible undertakings will receive the same reduction.

#### **2.5. Beneficiaries**

##### *2.5.1. Part A: RES and CHP Support Scheme*

- (16) The same categories of beneficiaries approved for receipt of support under the original support scheme approved in Commission decision SA.28799 *Support for production of electricity from renewable energy sources and in co-generation installations* are eligible for support under the notified measure.<sup>6</sup> For RES installations these include:

- energy potential of watercourses;
- wind energy used in generating plants on land;
- solar energy used in photovoltaic power plants;
- energy from biogas obtained from biomass and biodegradable waste;
- energy from landfill gas;
- energy from gas obtained from sludge produced in wastewater purification plants; and
- energy from biodegradable waste.

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<sup>4</sup> OJ L 327, 22.12.2000.

<sup>5</sup> OJ L 312, 22.11.2008.

<sup>6</sup> Recital 10.

- (17) The notified measure introduces one addition to the list above in the form of operators of depreciated wood biomass installations. Under the notified measure these may be considered eligible for support in cases where it is demonstrated that, owing to the price of wood biomass, their production costs exceed the market price of electricity.
- (18) Part A of the notified measure on the RES and CHP support scheme will extend scheme eligibility to these installations for the first time.
- (19) Slovenia has submitted cost data for wood biomass plants showing the reference costs breakdown for projects over a range of sizes.

Size Category	Up to 50 KW	Up to 1 MW	Up to 10MW
Size [MWe]	<b>0.045</b>	<b>0.6</b>	<b>2</b>
Operating Hours [h/a]	<b>7,500</b>	<b>7,500</b>	<b>7,500</b>
Specific Investment [€/kW <sub>el</sub> ]	<b>4,450</b>	<b>5,000</b>	<b>3,200</b>
Maintenance [% inv.]	<b>2.0</b>	<b>2.0</b>	<b>2.0</b>
Operation [% inv.]	<b>0.8</b>	<b>0.8</b>	<b>0.8</b>
Insurance etc. [% inv.]	<b>1.2</b>	<b>1.2</b>	<b>1.2</b>
Labour [No. of people]	<b>1</b>	<b>1</b>	<b>3</b>
Only electricity [%]	<b>22.8</b>	<b>27.5</b>	<b>17</b>
Only heat [%]	<b>56.3</b>	<b>36.2</b>	<b>53.0</b>

*Table 1. Input data for determining RCE 2015 for power plants using wood biomass. Source: Slovenian authorities.*

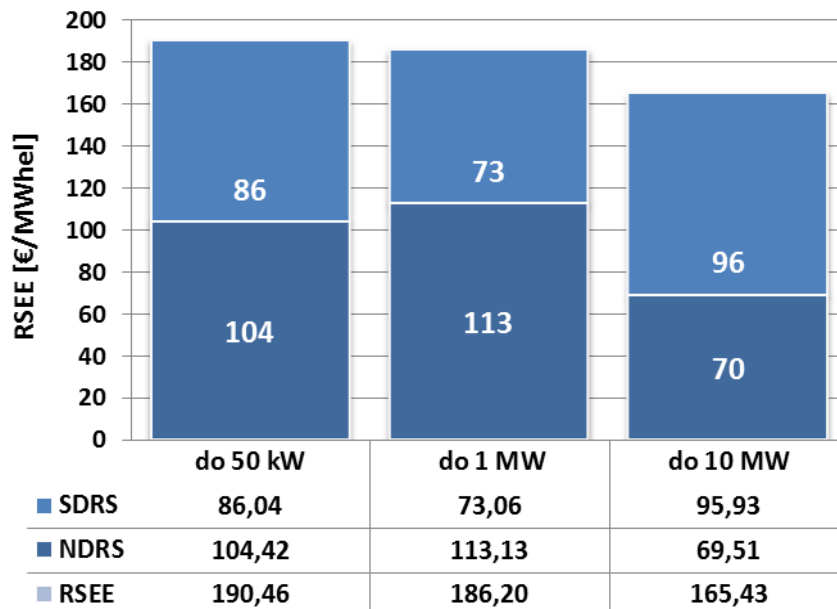


Figure 1. RCE 2015 for power plants on wood biomass

Where:

<b>RSEE</b>	Reference costs of electricity (RCE)
<b>SDRS</b>	Variable Part of the Reference Costs (VPRC)
<b>NDRS</b>	Fixed Part of the Reference Costs (FPRC)

- (20) Slovenia has committed to ensuring that a monitoring mechanism is put in place in order to verify that the operating costs borne by these installations are higher than the market price of energy. Production costs data informing this mechanism will be updated at least annually.
- (21) Per the decision in SA.28799 *Support for production of electricity from renewable energy sources and in co-generation installations* all RES installations to which aid may be granted generate electricity from renewable energy sources as defined in the EEAG.<sup>7</sup>
- (22) For CHP installations aid may only be granted to high efficiency co-generation installations as defined in the EEAG. The following technologies are eligible for support
- Combined cycle gas turbines with heat recovery;
  - steam backpressure turbines;
  - steam-condensing extraction turbines;
  - gas turbines with heat recovery;
  - internal combustion engines;

<sup>7</sup> Recital 11.

- steam engines;
  - micro-turbines;
  - Stirling engines;
  - fuel cells;
  - engines with organic Rankine cycles; and
  - any other type of co-generation technology.
- (23) Eligible beneficiaries under the EZ-1 were limited to a maximum nominal installed capacity of 50 MW for wind installations, 20 MW for CHP and 10 MW for all other RES. These thresholds remain in place under the notified measure.
- (24) Under the scheme approved in *SA.28799 Support for production of electricity from renewable energy sources and in co-generation installations* operators of eligible installations were automatically entitled to support. Under the notified measure, however, all beneficiaries will be selected through a competitive tender.
- (25) For 2016 the Slovenian authorities have divided the tender as follows in order to target certain technologies:
- 10% for hydroelectric plants of 1MW or less;
  - 30% for wood biomass plants of 1MW or less;
  - 10% for CHP installations using natural gas of 50kW or less;
  - 30% for renovated CHP installations operating in district heating systems; and
  - 20% for all other installations including those which were unsuccessful in the other four categories.
- (26) From 1 January 2017 beneficiaries will be selected on the basis of a two phase tender regime. The tender will be carried out each year by the Energy Agency and will be held in two rounds.
- (27) Round 1 will be allocated between 70-90% of the overall available budget in any given year and is open to new installations falling into two 'pots'.
- (28) Pot 1 will be open to RES generators operating technologies based on the exploitation of resources which do not need to be purchased, i.e. non-fuelled technologies including solar, wind and hydropower.
- (29) Pot 2 will be available to technologies which are less competitive or bear higher risks during the preparation phase i.e. fuelled or less competitive technologies including CHP, biomass, biogas and geothermal.
- (30) Projects from both pots which fail to be selected in this first round will be eligible to compete in round 2.

- (31) In the event that the number of applicants in pot 1 and/or pot 2 is insufficient to use all of the funding allocated to that pot, any unused budget will be added to the available budget for round 2.
- (32) Round 2 will be open to all projects including renovated installations and depreciated wood biomass facilities that are otherwise too old to be deemed eligible under the scheme if, owing to the price of wood biomass, their production costs exceed the market price for electricity. This round will be run on a technology neutral basis with the most cost effective projects of whatever technology being selected.

#### 2.5.2. *Part B: reduction in support scheme contributions for EIUs*

- (33) The beneficiaries of Part B of the notified measure, the reduction in support scheme contributions, are:
- Companies in the sectors indicated in Annex 3 of the EEAG whose electro-intensity exceeds 5%. These beneficiaries will receive a 70% reduction on their support scheme contribution; and
  - Companies in the sectors indicated in Annex 5 of the EEAG whose electro-intensity exceeds 20%. These beneficiaries' contributions to the support scheme will be limited to 4% of their gross value added.
- (34) In order to avail of the reductions for EIUs, prospective beneficiaries also need to satisfy the following cumulative requirements imposed by Slovenia:
- (a) The average annual off-take of electricity of the beneficiary in the last three years at the point of consumption exceeds 1 GWh;
  - (b) The average electro-intensity of the beneficiary exceeds 5% in the previous three years;
  - (c) The beneficiary is not a firm in difficulty as defined in the Guidelines on State aid for rescuing and restructuring firms in difficulty<sup>8</sup>; and
  - (d) The beneficiary does not have any unrecovered or outstanding debts within the meaning of a European Commission decision declaring aid unlawful or incompatible with the internal market.
- (35) The estimated number of beneficiaries likely to receive support in the form of reductions to their support scheme contributions is between 51 and 100.

## 2.6. **Form of aid and level of support**

#### 2.6.1. *Part A: RES and CHP support scheme*

- (36) Installations with a nominal installed capacity up to 500kW may continue to receive the feed-in tariff approved in Commission decision SA.28799 *Support for production of electricity from renewable energy sources and in co-generation installations*.

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<sup>8</sup> Communication from the Commission – OJ C 249, 31.7.2014.

- (37) For installations above this threshold support will be paid in the form of a market premium on top of the market price.
- (38) Eligible installations are first selected via an Energy Agency public call to enter the support scheme. In their application, the bidder will state the level of support under which it is prepared to construct and operate the installation. The price offered may not exceed the maximum price caps for each category of technology.
- (39) To set the technology price caps the Energy Agency in Slovenia has articulated maximum reference costs based on evolving costs data in Slovenia. These costs will be the maximum price caps for each category of technology in 2016.
- (40) After 2016 the maximum price at which a beneficiary proposing to operate a particular technology was successful in the tender will be set as the price cap for that technology in the following year. If no project from that technology is successful, the reference prices will continue to be used.
- (41) From 2017 Slovenia will move to the phased 'two pot tender system', outlined above in recitals (27) to (32).
- (42) The market premium awarded to projects which succeed at tender is based on the difference between the reference costs of electricity ('RCE') and the actual market price of electricity. This is calculated on the basis of the reference market price. This is illustrated by the following formula:

$$\mathbf{MP = RCE - P_{el\ Ref}}$$

Where:

**MP** Market Premium/year (€/MWh)

**RCE** Reference Costs of Electricity (€/MWh)

**P<sub>el Ref</sub>** Reference price of electricity (€/MWh)

- (43) If at any time the reference price of electricity exceeds the reference costs then the support payable will be fixed at €0/MWh for that period.
- (44) The reference price for electricity is determined by the Energy Agency annually in its report on the reference prices of energy. It is formulated on the basis of a pricing model that takes account of the prices of market products on the European Energy Exchange in Leipzig for the coming year and the last published annual auction price, before 25 October in any given year, for transmission capacities between Austria and Slovenia.
- (45) Its calculation is illustrated by the following formula:

$$\mathbf{P_{el\ Ref} = PBYF + AP_{APG \rightarrow Els}}$$

Where:

**P<sub>el Ref</sub>** Reference price of electricity (€/MWh)

<b>PBYF</b>	Average prices of the 'Phelix Baseload Year Futures' product on the Leipzig EEX for the next year (€/MWh) <sup>9</sup>
<b>AP<sub>APG→Eles</sub></b>	Is the last published auction price for cross-border transmission capacities between Slovenia and Austria as published on the official website of the Central Allocation Office between the results of the annual auction process.

- (46) The reference costs of electricity are the costs bid by the potential beneficiaries in the tender. The bid submitted to tender must show the fixed and the variable components of the reference cost which the applicant is bidding.
- (47) The methodology which Slovenia utilises for determining the reference costs of electricity is based on the determination of the total annual operating costs of RES installations less the total revenues and benefits of operation. This can be expressed using the following formula:

$$\text{RCE} = (\text{COSTS-REVENUES})/\text{ELECTRICITY}$$

Where:

<b>Costs</b>	Annuity + operating costs + fuel costs
<b>Revenues</b>	Sale of heat (if applicable) + other benefits
<b>Electricity</b>	Annual electricity generated (MWh)

- (48) The above inputs factor in the following technological and operational variables:

<b>1. Main technological and operational parameters</b> <ul style="list-style-type: none"> <li>• Installed capacity (MW<sub>el</sub>)</li> <li>• Annual operating hours</li> <li>• Electrical efficiency (Eleff %)</li> <li>• Thermal efficiency (Theff %)</li> </ul>
<b>2. Investment Costs (€/kW<sub>el</sub>) include:</b> <ul style="list-style-type: none"> <li>• Machinery and electrical equipment</li> <li>• Construction costs</li> <li>• Installations, start-up, and testing</li> <li>• Network connection</li> <li>• Planning and permitting</li> </ul> <p>Investment costs are included in the calculation of the reference cost of electricity with an annuity calculation (15 year-economic period of the project and 7.2% discount rate) to represent the costs of depreciation and the cost of capital.</p>
<b>3. Operating Costs (€/MWh<sub>el</sub>)</b> <ul style="list-style-type: none"> <li>• Maintenance</li> <li>• Operation – work (number of employees, €/year)</li> <li>• Insurance and other costs (% of investment, €/year)</li> </ul>

<sup>9</sup> The average of the final trading prices achieved for the product for the previous ten trading days prior to 25 October is used to determine the PBYF.

<b>4. Fuel Costs (€/MWh<sub>el</sub>)</b>
<b>5. Revenues</b> <ul style="list-style-type: none"> <li>• Sale of heat</li> <li>• Other benefits</li> </ul>

- (49) Under the notified measure, eligibility for support is now extended to wood biomass facilities which, due to their age, would not ordinarily qualify for support. The proposed amendment will render such facilities an eligible technology to apply for support once this decision is adopted if their production costs exceed the market price by virtue of an increase in the cost of wood biomass.<sup>10</sup>
- (50) For these installations their support will be determined on the basis of the following formula:

$$OP = VPRC - P_{el\ Ref}$$

Where:

<b>OP</b>	Operational support
<b>VPRC</b>	Variable part of the reference costs
<b>P<sub>el Ref</sub></b>	Reference price of electricity (€/MWh)

- (51) These installations are still remunerated via a market premium, but the quantum of that premium will only take into account the 'variable' aspect of the reference costs, excluding any investment costs which, owing to their age, it would be expected that the installation had already recouped through operation.
- (52) If an applicant has received (or will receive) any aid from any other source this must be indicated on the application form for support. Applicants for support are required to indicate on the application form which they submit for the tender whether they are, or may be, in receipt of any other aid. Similarly, if they come to be in receipt of any aid during the lifetime of their support scheme, beneficiaries are under an obligation to inform and document such aid to the Energy Agency.
- (53) Applicants who have received any investment aid will be required to bid a tender price which includes the full investment costs of their installation, inclusive of any investment aid received. In this way, Slovenia ensures that there is no competitive advantage to certain developers in the tender by virtue of their having received investment aid.
- (54) If such a developer is successful in the tender then the fixed part of the reference costs which is the basis for determining the level of their market premium is accordingly reduced by this amount (expressed in €/MWh) in the decision allocating support as a result of the investment aid received.

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<sup>10</sup> See recitals 25 and 32 of the present decision.

(55) This can be illustrated by the following formula:

$$(\text{€Aid received}) * A / (\text{rated electrical power in MW} * H)$$

Where:

**A** Annuity factor with a 15 year economic lifecycle for RES installations or a 10 year economic lifestyle for CHP facilities, and a discount rate taking into account the following:

- the general discount rate for all facilities is that laid down in the Decree governing the uniform methodology for the preparation and treatment of investment documentation in the field of public finance;

- if the published discount rate is higher than that used in the calculation of the references costs of electricity, the discount rate from the calculation of the reference costs of electricity will be the relevant discount rate to calculate factor A;

- if the discount rate referred to in either of the above indents is lower than the reference discount rate from the calculation of the State aid in loans or other financial instruments paid in instalments, the reference discount rate published for Slovenia in the Official Journal of the EU will be the relevant discount rate to calculate factor A.

**H** The annual number of operating hours of the unit according to the published methodology for determining reference costs.

(56) The reduction in the fixed part of the reference costs of electricity by virtue of the receipt of cumulated aid is thus taken into account for the specific production facility throughout the entire period of eligibility for support irrespective of any change to the operator of the facility during its lifetime.

(57) Slovenia has committed to ensuring that all beneficiaries of 500kW of installed capacity or more selected for support under the notified measure will be subject to standard balancing responsibilities.

(58) Furthermore, no support to RES or CHP producers will be payable where prices are negative for six consecutive hours on the day-ahead market.

#### *2.6.2. Part B: reduction in support scheme contributions for EIUs*

(59) The support scheme for eligible RES and CHP producers is funded through the imposition of a parafiscal levy on electricity consumers in Slovenia.

(60) The funds are paid as lump sum payments on connection. The level of contribution is based on the power of the connection (fuse rating) and the voltage level at which a particular consumer or consumer group is connected. Contributions are then payable annually.

(61) For EIUs in the sectors listed in Annex 3 of the EEAG with an electro-intensity which exceeds 5%, a 70% reduction on their support scheme contributions will be made available.

- (62) For companies in the sectors listed in Annex 5 of the EEAG, their overall annual contributions will be limited to 4% of their average gross value added.
- (63) Electro-intensity is calculated in accordance with the methodology in Annex 4 of the EEAG.
- (64) An *ex-post* monitoring mechanism will ensure that any overpayment of the support will be identified and repaid before 1 July in the following year.

## **2.7. Duration of support**

- (65) At the level of individual beneficiaries, the aid is granted for a period of 15 years for RES installations. CHP installations using biomass will receive aid for 15 years; those using biogas will receive aid for 10 years.
- (66) This will be altered for installations which have been renovated; for these installations the period of support will be made shorter with the deduction of that period of time which has elapsed since the renovation from the applicable period for support (10 or 15 years, as applicable) informing the duration of their support.
- (67) The notified measure will expire on 31 December 2019.

## **2.8. Granting Authority**

- (68) The Ministry of Energy acts as granting authority. The eligibility for aid is assessed by the Energy Agency of Slovenia, which is also responsible for ensuring compliance with the cumulation rules.

## **2.9. Source of financing**

- (69) The funds to provide the support to RES producers under Part A of the notified measure, the RES and CHP support scheme, are sourced from a combination of:
  - the RES and CHP contributions paid by all final consumers of electricity, natural gas, and other gasses used in grid and district heating;
  - contributions levied on solid and liquid fossil fuels, liquid petroleum and liquefied natural gas and heat from district heating systems; and
  - revenues which the Centre for RES/CHP Support receives through the sale of electricity it is obligated to purchase from recipients of the feed-in tariff.

The funding may also be supplemented by central government funding from the Slovenian national budget and Slovenia's Climate Change Fund.

## **2.10. Budget**

- (70) The expected budget for new RES and CHP installations under Part A of the notified measure over the lifetime of the scheme is an estimated 600 million EUR.
- (71) The Slovenian authorities estimate that the reductions in RES levies granted to EIUs under Part B of the notified measure will total 242.5 million EUR over the lifetime of the scheme.

### 3. ASSESSMENT OF THE MEASURE

#### 3.1. Presence of aid

- (72) Article 107(1) TFEU provides that “*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, shall, in so far as it affects trade between Member States, be incompatible with the common market*”.

##### 3.1.1. Part A: RES and CHP support scheme

- (73) In its decision on SA. 28799 *Support for production of electricity from renewable energy sources and in co-generation installations* the Commission concluded that the renewable support scheme constituted State aid within the meaning of Article 107(1) of the Treaty.<sup>11</sup> The notified measure does not alter the structure of this scheme and so does not alter this conclusion.

##### 3.1.2. Part B: proposed reduction in support scheme contributions for EIUs

- (74) The first aspect of the Article 107(1) definition requires that State aid is granted by a Member State or through State resources. The reductions granted to EIUs under the notified measure are imputable to the State as they are granted on the basis of its laws, specifically the EZ-1.
- (75) The reductions also qualify as aid granted through State resources. In its decision on *Case No C 7/2005 on the State aid scheme implemented by Slovenia in the framework of its legislation on qualified energy producers* the Commission concluded that the compulsory levy used to finance the scheme was a State resource.<sup>12</sup>
- (76) As such, the measure in Commission decision SA. 28799 *Support for production of electricity from renewable energy sources and in co-generation installations*, which was a modification of the earlier decision in *Case No C 7/2005 on the State aid scheme implemented by Slovenia in the framework of its legislation on qualified energy producers*, did not depart from this conclusion and the Commission sees no reason to depart from it now. The levy therefore remains a State resource and the reductions granted to EIUs under the notified measure constitute a foregoing on the part of the Member State of resources which would otherwise have flowed under a system of compulsory charges. The partial relief being granted in the form of reductions in contributions under the notified measure thus constitutes State aid granted by a Member State or through State resources.
- (77) The reductions also constitute an advantage as they relieve the beneficiaries of a significant portion of the full levy that they would normally have had to pay.
- (78) The notion of State aid under Article 107(1) TFEU also envisages a degree of selectivity insofar as only certain undertakings (or the production of certain

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<sup>11</sup> Recital 58.

<sup>12</sup> OJ L 219, 24.8.2007, recitals 68-72.

goods) are favoured. Part B of the notified measure, the reduction in support scheme contributions for EIUs, is selective because only EIUs defined as eligible under the auspices of the notified measure are entitled to benefit from the reductions, other electricity consumers are not.

- (79) The definition in Article 107(1) also refers to the capacity of a measure to affect trade between Member States. The potential beneficiaries of the proposed reduction are producers of energy-intensive products and 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.
- (80) Part B of the measure, the proposed reductions in contributions to the support scheme for EIUs, thus also satisfies all relevant tenets of Article 107(1) TFEU and constitutes State aid.

### **3.2. Legality**

- (81) The Slovenian authorities have committed to ensuring that the eligibility conditions for new RES and CHP plants under Part A of the notified measure will not be put into effect until after this Commission decision on the notified measure has been adopted. Similarly, the tenders to allocate renewables support will not be implemented without Commission approval. This aspect of the notified measure thus complies with Slovenia's stand-still obligation under Article 108(3) TFEU.
- (82) However, the Commission notes that Slovenia put the reductions in support scheme contributions for EIUs proposed under Part B of the measure into effect in September 2015 before the measure had been approved by the Commission.
- (83) Therefore at this time that aspect of the notified measure which relates to the proposed reductions for EIUs has become unlawful aid granted in violation of Slovenia's stand-still obligations under Article 108(3) TFEU.

### **3.3. Compatibility**

- (84) The Commission has assessed the notified aid scheme on the basis of Article 107(3) TFEU and on the basis of the EEAG, in particular Sections 3.3 (Aid to energy from renewable sources), 3.4 (Energy efficiency measures, including cogeneration and district heating and district cooling) and 3.7.2 (Aid in the form of reductions in the funding of support for energy from renewable sources).
- (85) Section 3.2 of the EEAG sets out how the Commission will apply the common assessment principles to aid measures falling within the scope of the EEAG, unless the more specific sections of Chapter 3 specify or amend these general compatibility conditions. The Commission will therefore consider the compatibility of the notified measure with the common assessment principles by first considering compliance with Sections 3.3, 3.4 and 3.7.2 of the EEAG.

#### *3.3.1. Part A: RES and CHP support scheme*

##### *3.3.1.1. Objective of common interest*

- (86) The objective of Part A of the notified measure, the RES and CHP support scheme, is to help Slovenia to achieve the renewable energy targets set by the EU

as part of its 2020 strategy as well as to improve the energy efficiency of its electricity production.

- (87) Slovenia has a mandatory national target of 25% share of energy from RES in gross final energy consumption by 2020, the achievement of which is one of the main objectives of the original measure in Commission decision SA.28799 *Support for production of electricity from renewable energy sources and in co-generation installations*.<sup>13</sup> Based on energy statistics at the end of 2014 Slovenia has managed to achieve approximately 21.9% RES share. The attainment of the balance of their national target is the purpose of the notified measure.
- (88) According to Point 117 of the EEAG when granting State aid to hydropower installations, the Member State must respect the requirements of the Water Framework Directive, in particular Article 4(7) thereof which lays down criteria which have to be met in case a new modification would deteriorate the status of a water body.
- (89) In this respect, the Commission notes the requirement for hydropower projects not to compromise reaching or maintaining the quality objectives of the water body (as certified by the river basin competent authority) in order to be eligible for aid.
- (90) Slovenia has committed to full implementation of Point 117 when granting aid to hydropower as per recital (12) above.
- (91) In addition, the Commission notes that Point 118 of the EEAG requires that State aid for energy from renewable sources using waste, including waste heat, as input fuel should comply with the waste hierarchy, as laid down in the Waste Framework Directive. Slovenia has committed to respecting the waste hierarchy as outlined in recital (13) above, when granting aid for renewable sources using waste.
- (92) In addition, the CHP support scheme aims at improving the energy efficiency of Slovenia's electricity production. The Union sets the objective of saving 20% of the Union's primary energy consumption by 2020. Cogeneration can make an important contribution to that objective and to environmental protection when it is highly efficient (Point 139 EEAG) and does not circumvent the waste hierarchy (Point 140 EEAG). The CHP support notified by Slovenia is limited to highly efficient CHP facilities per recital (22) above and Slovenia has committed not to circumvent the waste hierarchy when granting aid for renewable sources using waste as outlined in recital (13) above.
- (93) The Commission therefore concludes that the RES and the CHP support scheme under Part A of the notified measure is clearly aimed at an objective of common interest in accordance with Article 107(3) TFEU.

#### 3.3.1.2. Need for State intervention

- (94) In accordance with Section 3.2.2 of the EEAG, Member States need to demonstrate a need for State intervention; in particular they need to demonstrate that the aid is necessary to remedy a market failure that would otherwise go

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<sup>13</sup> Recital 4.

unaddressed. In the case of the production of electricity from RES, the Commission presumes that a market failure persists, which may be addressed through aid for RES for the reasons set out in Point 115 of the EEAG. Furthermore, energy-efficiency measures also target negative externalities by creating individual incentives to attain environmental targets for energy efficiency (Point 142 of the EEAG).

- (95) The assessment of the production costs to market price ratio in the Commission decision on *SA.28799 Support for production of electricity from renewable energy sources and in co-generation installations* concluded that production costs exceeded the market prices for all eligible RES and CHP installations.<sup>14</sup> That conclusion remains relevant for all technologies under the scheme and is also true for depreciated wood biomass facilities (the production costs of which are described at recital (19), above).
- (96) Slovenia submitted a breakdown of the average costs facing such installations which demonstrate that the production costs exceed the market price of electricity.

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<sup>14</sup> Recitals 63 – 65.

### Depreciated wood biomass plant

Electrical capacity	<i>MWe</i>	5
Electricity generation	<i>GWh</i>	28
Useful heat generation	<i>GWh</i>	107
Wood biomass cons.	<i>GWh</i>	162
Investment costs	€	
O&M	% of inv.	4%
Labour cost	€/year	75,000
Wood biomass price	€/MWh	32.62
Heat price	€/MWh	37.93

<b>Yearly costs</b>		<b>6,051,068</b>
Investment costs	€	0
Fuel costs	€	5,276,068
O&M costs	€	700,000
Labour cost	€	75,000
<b>Heat income</b>	<b>€</b>	<b>4,067,480</b>
<b>Net electricity costs</b>	<b>€</b>	<b>1,983,588</b>
<b>Total production costs</b>	<b>€/MWh<sub>El</sub></b>	<b>72.13</b>
<b>Electricity market price</b>	<b>€/MWh<sub>El</sub></b>	<b>36.48</b>
<b>Operation support needed</b>	<b>€/MWh<sub>El</sub></b>	<b>35.65</b>

- (97) Furthermore, as detailed in recital (43) above, the mechanics of the scheme are such that they ensure that if the market price exceeds the reference costs for any individual project no support will be payable for that period.
- (98) As such, without support, there is no economic incentive to deploy RES or CHP installations in Slovenia at present as the market price alone would be insufficient to cover the production costs of beneficiaries.
- (99) The Commission finds that without the intervention the market would not deliver the attainment of Slovenia's RES and CHP goals. Slovenia has thus demonstrated a need for State intervention to do so.

#### 3.3.1.3. Appropriate instrument

- (100) Point 27(c) of the EEAG stipulates that the proposed measures should be an appropriate policy instrument to address the objective of common interest in accordance with Section 3.2.3 of the EEAG. In order to allow Member States to achieve their renewable energy targets in line with the Renewable Energy Directive, Point 116 of the EEAG provides that the Commission will presume the appropriateness of aid to support the generation of energy from RES provided that the aid complies with all other applicable conditions. In addition, as far as the support to CHP installations is concerned, the Commission considers that State aid can be considered as an appropriate instrument to finance energy-efficiency measures, independently of the form in which it is granted (Point 145 EEAG).

- (101) The RES support complies with all other conditions as per recital (140), below.
- (102) The Commission therefore is satisfied that the RES and CHP support is being realised via an appropriate instrument.

#### 3.3.1.4. Incentive effect

- (103) Point 27(d) of the EEAG provides that aid must have an incentive effect in accordance with Section 3.2.4 of the EEAG in order to be deemed compatible with the internal market.
- (104) Point 49 of the EEAG provides that State aid has an incentive effect if it induces the beneficiary to change its behaviour towards reaching the objective of common interest which the relevant measure pursues.
- (105) Point 52 of the EEAG provides that the requirements in Points 50 and 51, relating to application forms for the aid, need not be met in where the aid is to be awarded on the basis of a competitive bidding process, as is the case in the notified measure.
- (106) The Commission thus finds that the notified measure has an incentive effect.

#### 3.3.1.5. Proportionality and distortion of competition

- (107) Section 3.3.2.1 of the EEAG sets out the conditions under which operating aid for the production of electricity from RES can be found to be proportionate and not unduly distortive to competition. The same conditions apply for the assessment of operating aid for high energy efficient cogeneration plants (see Point 151 EEAG).
- (108) Point 124 of the EEAG sets cumulative conditions for the grant of aid to electricity from renewable energy sources applicable from 1 January 2016. Point 124(a) requires that aid is granted as a premium to the market price whereby the generators sell its electricity directly to the market. According to Point 125 of the EEAG an exemption on the basis of installed capacity is available to installations under 500kW. As described in recitals (36) and (37) above, Slovenia has committed to ensuring that installations of 500kW or more will only be only eligible to apply for a market premium. The measure therefore complies with Point 124(a) of the EEAG.
- (109) Point 124(b) of the EEAG requires that beneficiaries above 500kW are subject to standard balancing responsibilities. As per recital (57) above, Slovenia has confirmed that this will be the case and so the measure complies with Point 124(b) of the EEAG.
- (110) Point 124(c) of the EEAG provides that measures must be put in place to ensure that generators have no incentives to generate electricity during periods of negative pricing. Per recital (58) above, no support will be payable to beneficiaries in receipt of a market premium where prices are negative for 6 consecutive hours on the day-ahead market. The notified measure therefore complies with Point 124(c) of the EEAG.
- (111) Point 126 of the EEAG requires that during the transitional phase covering the years 2015 and 2016 at least 5% of the planned new electricity capacity from RES installations should be granted on the basis of a competitive bidding process. In

2015 no new installations were granted aid under the existing scheme. Once the present decision has been adopted Slovenia intends to hold a tender for support in 2016 as outlined above in recital (25). Therefore all support during the transitional phase will be granted on the basis of a competitive tender in compliance with Point 126 of the EEAG.

- (112) For the RES and CHP support scheme, Slovenia proposes the utilisation of a competitive bidding process to select all eligible beneficiaries for its support scheme under Article 373 of EZ-1. This will replace the previous mechanism whereby new RES facilities were automatically entitled to support under the regime once they had connected to the grid.
- (113) Point 126 of the EEAG provides that a competitive bidding process should be conducted on a non-discriminatory basis open to all generators producing electricity from RES from 1 January 2017.
- (114) However, Point 126 of the EEAG also provides that the bidding may be limited somewhat where a process open to all generators would lead to a suboptimal result which cannot be addressed in the process design of the tender.
- (115) From 1 January 2017 Slovenia has committed to the design of a two round phased tender system with two technology pots in the first round based on technology types. The detail of this tender design is outlined above at recitals (26) to (32).
- (116) Slovenia's tender mechanism is conducted in two rounds. The first round is offered to two different technology pots. The second round is open to all generators irrespective of their technology type.
- (117) Slovenia justifies the need for the two technology pots in the first round on grounds of Point 126(b) of the EEAG- the need to achieve diversification.
- (118) In designing the two pot system in the first round Slovenia has sought to ensure that it will always be the case that one technology is not the only type of beneficiary selected, and so a minimum level of diversification is always achieved.
- (119) Slovenia's particular concern would be that the least cost 'non-fuelled' technology would dominate a completely open tender if there was not at least this minimum level of delineation.
- (120) Slovenia has explained that the fuelled aspect of the technologies in Pot 2 means that installations which fall into this bracket will not be able to compete as effectively with non-fuelled projects. As detailed in recitals (46) to (48) above, tender participants will bid on the basis of their RCE. The resulting RCE has both a fixed and a variable component. The fixed component comprises the annuity (investment costs) and the operating costs; the variable part of the RCE comprises the fuel costs. The level of fuel costs is therefore key to the determination of the reference costs.
- (121) For fuelled technologies this will present additional investment risks because fuel markets, and thus fuel prices, cannot be reliably forecast over 15 years. Furthermore, Slovenia has explained that long term index-linked renewable fuel contracts are not available in Slovenia that would allow generators to accurately

price this risk. Rather, renewable fuel contracts are usually publically procured on a fixed price, non-indexed basis for periods of about two years at a time.

- (122) Without the distinction between the two pots therefore it is felt that under current market conditions non-fuelled technologies are better able to estimate their RCE over 15 years and so need not price a fluctuation risk element into their RCE due to uncertainty on fuel costs.
- (123) Added to this Slovenia submitted sample reference costs for all eligible technologies.

RES production facility	RCE[EUR/MWh <sub>e</sub> ]					
	2015			2009		
	up to 50 kW	up to 1 MW	up to 10 MW	up to 50 kW	up to 1 MW	up to 10 MW
Hydro Power Plants	112.02 (↑)	88.44 (↓)	78.19 (↓)	105.47	92.61	82.34
Wind Power Plants	122.54 (↑)	102.51 (↑)	88.45 (↓)	95.38	95.38	95.38
Solar Power Plants - on buildings	121.86 (↓)	89.54 (↓)	72.41 (↓)	150,00 <sup>85</sup>	137,19 <sup>85</sup>	113,85 <sup>85</sup>
Solar Power Plants - independent structures	72.41 (↓)	72.41 (↓)	72.41 (↓)	140,95 <sup>85</sup>	129,86 <sup>85</sup>	104,68 <sup>85</sup>
Geothermal Power Plants	151.40 (↓)	151.40 (↓)	151.40 (↓)	152.47	152.47	152.47
Power Plants on Wood Biomass	190.46	186.20 (↓)	165.43 (↓)	Indiv.	224.35	167.43
Power Plants with Wood Biomass Cofiring (>5%)	114.87 (↑)	114.87 (↑)	114.87 (↑)	102.54	102.54	102.54
Biogas Power Plants - biomass	203.08 (↑)	114.51 (↓)	94.53 (↓)	160.05	155.76	140.77
Biogas Power Plants - waste	104.19 (↓)	104.19 (↓)	79.43 (↓)	139.23	139.23	129.15
Biogas Power Plants using biogas from wastewater treatment facilities	70.99 (↓)	61.35 (↓)	54.21 (↓)	85.84	74.42	66.09
Landfill Gas Power Plants	69.93 (↓)	53.80 (↓)	49.20 (↓)	99.33	67.47	61.67
Power Plants Using Biodegradable Waste	/	62.59 (↓)	60.09 (↓)	/	77.44	74.34

Table 2: RCE for renewables in Slovenia. Source: Slovenian authorities.

RCE 2015 [€/MWh <sub>EL</sub> ]								
2015					2009			
CHP PF	up to 50 kW	up to 1 MW	up to 5 MW	up to 20 MW	up to 50 kW	up to 1 MW	up to 5 MW	up to 20 MW
CHP of up to 4,000 hours	183.92 (↓)	121.93 (↓)	87.58 (↓)	76.51 (↓)	238.59	157.53	123.24	120.10
CHP of more than 4,000 hours	140.55 (↓)	101.85 (↓)	75.35 (↓)	66.15 (↓)	180.75	127.00	99.57	99.37

Table 3: RCE for CHP in Slovenia. Source: Slovenian authorities.

- (124) The above costs show three non-fuelled technologies with reference prices below €72.41 (the average RCE of solar installations up to 10MW).<sup>15</sup> These are biogas power plants using biogas from wastewater treatment facilities, landfill gas power plants and power plants using biodegradable waste. It should be noted that per Slovenia's National Renewable Energy Action Plan 2010-2020 Slovenia's potential capacity to deploy these technologies is thought to be extremely limited.

Sector of origin	Type of biomass	2015		2020	
		Expected amount of domestic resource [m <sup>3</sup> ]	Production of primary energy [ktoe]	Expected amount of domestic resource [m <sup>3</sup> ]	Production of primary energy [ktoe]
(A) Biomass from forestry	1. direct supply of wood biomass from forests and other wooded land for energy generation	1,302,000	324	1,338,000	1,333
	2. indirect supply of wood biomass for energy generation				
(B) Biomass from agriculture and fisheries	1. agricultural crops and fishery products directly provided for energy generation				
	2. agricultural by-products/processed residues and fishery by-products for energy generation				
(C) Biomass from waste	1. biodegradable fraction of municipal solid waste, including biowaste and landfill gas				

<sup>15</sup> For larger scale CHP indicative RCE also show capacity to compete with Pot 1 technologies but Slovenia has explained that their CHP projections show a greater concentration amongst smaller scale CHP installations rather than projects in this larger range.

	2. biodegradable fraction of industrial waste (including paper, cardboard, pallets).				1
	3. sewage sludge				

*Table 4: Expected sources of domestic biomass in Slovenia in 2015 and 2020. Source: Slovenia – National Renewable Energy Action Plan 2010-2020.*

- (125) Excluding these three technologies, it is expected that without intervention the least cost non-fuelled technology from the other technologies in Pot 1 would likely pre-dominate, to the possible exclusion of all other technologies.
- (126) Looking at the reference costs for projects of up to 1MW in Pot 1, for example, (the size which Slovenia expects to represent the majority of potential projects), the reference costs for hydro power plants are €88.44/MWh, for wind are €102.51/MWh and for solar are €89.54/MWh, see Table 2 above.
- (127) Slovenia has further explained that given the variance in wind conditions across Slovenia (which tends not to be the case for solar) it is expected that certain wind projects would be in a position to better these reference costs in their bids and so compete with hydropower and solar ensuring competitive tension in Pot 1 and ensuring that no one technology is allowed to dominate completely. However, even if this were the case, the existence of Pot 2 ensures at least a minimum degree of diversification with at least two technologies being selected, one from each pot, in any given year.
- (128) In Pot 2 it is evident that in that same 1MW range biomass and biogas projects cannot compete as effectively with the Pot 1 technologies, particularly solar. With the creation of the second pot, however, at least one of these technology types will always be selected.
- (129) Slovenia has also committed to ensuring that in any case where all participants in either pot succeed under a tender, then the least competitive bids, totalling 5% of the overall tender, will lose their eligibility for support. In cases of low numbers of participants, where a single participant represents over 5% of the tendered capacity and all participants are selected, then the least competitive participant will be ineligible to receive support. Any of the budget which goes unutilised in either of the two pots because of the operation of this rule will be reallocated to the second round of tenders.
- (130) Only new installations are eligible to compete in the first round. Renovated installations and depreciated wood biomass installations will be eligible for the second round which is open to all technologies without distinction.
- (131) Slovenia has justified the two round approach on the basis of a preference for making support available to new investment which is both more expensive and risky than renovated installations. Therefore a two round system is preferred in order to maintain control of the ratio between investment in new production facilities and renovation projects and so help Slovenia to ensure that new installations are deployed in furtherance of Slovenia's renewable energy targets.
- (132) The Commission thus finds that the tender design which Slovenia has proposed complies with Point 126 of the EEAG. In particular the tender design qualifies as

a competitive bidding process; it is open to all generators producing electricity from RES and CHP in the first round, with the only limitation relating to the 'potting' of eligible technologies. This limitation, as described above, is done on the valid grounds of ensuring a minimum level of diversification. The second round is without restriction and completely open. The proposed tender design can therefore be deemed a competitive bidding process.

- (133) Point 129 of the EEAG requires that aid may only be granted until installations have been fully depreciated. Producers of electricity from RES will receive support for a period of 10 or 15 years depending on their technology type, as outlined above in recitals (65) to (66). This accords with the standard useful lifespans of these installations and so complies with Point 129 of the EEAG.
- (134) Based on those elements and in particular the allocation of aid in competitive bidding processes open to all generators producing electricity from RES, the Commission concludes that the aid is proportionate and will not distort competition in a manner contrary to the internal market (see Points 109, 116, and 126 line 4, of the EEAG).
- (135) The notified measure also makes provision for existing wood biomass plants to receive aid after depreciation in certain circumstances, outlined above at recital (49). The general conditions which allow aid to be granted to existing biomass plants after plant depreciation are set out in Section 3.3.2.3 of the EEAG.
- (136) Point 133 of the EEAG establishes the cumulative conditions whereby the Commission will consider operating aid for biomass after plant depreciation compatible with the internal market. Point 133(a) requires that aid is only granted on the basis of energy produced from renewable sources. In the notified measure only beneficiaries operating wood biomass installations will be eligible for receipt of aid which accord with the definition of 'biomass' in Point 19(6) of the EEAG. Biomass is considered a renewable energy sources under the definition of such in Point 19(5) of the EEAG and so satisfies this condition.
- (137) Point 133(b) requires that the measure is designed in such a manner that ensures that it compensates the difference in operating costs borne by the beneficiary and the market price. The design of the measure is outlined in recitals (50) to (51), above. Further, per recital (43) above, it is only in circumstances where installations' production costs exceed the market price that they receive support.
- (138) In tendering, it is only the production costs which will form the basis of the reference costs for electricity which forms the basis of an applicant's bid. The support is calculated as the difference between these reference costs and the market price. Given the reference costs are based on the production costs the support is designed to ensure that the compensation is the difference between the operating costs borne by the beneficiary and the market price and so satisfies Point 133(b) of the EEAG.
- (139) Point 133(c) of the EEAG provides that a monitoring mechanism must be put in place to verify whether the operating costs borne are still higher than the market price of energy. The monitoring mechanism needs to be based on updated production cost information and take place at least annually. As outlined in recital (20), above, Slovenia has undertaken to ensure these obligations are met and so satisfies Point 133(c) of the EEAG.

- (140) The Commission therefore concludes that the notified measure complies with the provisions of Section 3.3.2 of the EEAG.

*3.3.2. Part B- compliance with Section 3.2.7 of the EEAG: aid in the form of reductions in funding support for electricity from renewable sources*

- (141) The second aspect of the measure, the reduction to support scheme contributions for EIUs is a facet of the support scheme itself. The variation to the support envisaged under Part B of the notified measure is a design feature of the overall RES support scheme aimed at optimising the attainment of the RES objective by ensuring that electro-intensive users are not so affected by the measure as to undermine its feasibility domestically. The Commission accepts that, without the reductions proposed by Part B of the notified measure, the support scheme itself may be rendered inoperable and that the reductions aim at facilitating the achievement of the objectives pursued by the RES support.
- (142) Point 182 of the EEAG provides that, whilst the financing of energy support schemes should in principle be recovered in a way which does not discriminate between the consumers on whom its costs are imposed, Member States may wish to grant partial compensation for the additional costs of such schemes to undertakings particularly affected by the financing costs who would otherwise be put at a significant competitive disadvantage.

*3.3.2.1. Reductions limited to the funding of the support for electricity from renewable energy sources*

- (143) Point 184 of the EEAG provides that in order to ensure that the aid serves to facilitate the funding of support to energy from RES, Member States will need to demonstrate that the additional costs reflected in higher electricity prices faced by the beneficiaries only result from the support to energy from RES.
- (144) In the present case the reductions are being granted against a direct levy which is imposed on all consumers on the basis of their connection capacity rather than an increase to their electricity price. Therefore the levy against which reductions are being granted is solely designed for the financing of the support scheme.
- (145) The levy, in conjunction with a range of other funding sources outlined at recital (69) above, finances support to electricity generated to both RES and CHP. In order to ensure that the reductions granted to EIUs relate only to RES support Slovenia has explained that CHP support accounts for approximately 25.27% of the total budget based on historical figures from the first and second quarters of 2015. Funds collected from sources other than the levy represent more than this proportion of the total funding. Therefore the levy, and the reductions being granted to it, can be entirely attributed to RES funding only.
- (146) Moreover, Slovenia has committed to plan the support scheme annually to ensure that funding for the scheme is combined in such a way that the collected contributions from the levy will not be used to finance CHP.
- (147) The Commission is satisfied therefore that the costs against which the reductions are being granted are solely related to the support of energy from RES.

3.3.2.2. Aid limited to sectors and undertakings that are electro-intensive and exposed to international trade

- (148) Points 185 to 186 of the EEAG provide that the aid should be limited to sectors that are exposed to a risk to their competitive positions due to the costs resulting from the funding of support to electricity from RES as a function of their electro-intensity and their exposure to international trade.
- (149) Accordingly, the aid can be granted if the undertaking belongs to one of the sectors listed in Annex 3 of the EEAG or to an undertaking with an electro-intensity of at least 20% which belongs to a sector with a trade intensity of at least 4% at Union level.
- (150) A list of mining and manufacturing sectors not included on Annex 3 of the EEAG with an extra-EU trade intensity of at least 4% can be found at Annex 5 of the EEAG.
- (151) Correspondingly, Slovenia has limited eligibility for reductions in support scheme contributions to Annex 3 undertakings and those on Annex 5 with an electro-intensity of at least 20%.
- (152) Slovenia will determine the electro-intensity of undertakings on Annex 5 in accordance with the methodology prescribed in Annex 4 of the EEAG, using an average of self-declared electricity prices from eligible undertakings to determine the assumed electricity price.
- (153) Point 187 of the EEAG contemplates the imposition of additional eligibility criteria by Member States provided that these are based on objective, non-discriminatory and transparent criteria, and that the aid is in principle granted for all competitors in the same sector as if they are in a similar factual situation.
- (154) The extra eligibility criteria imposed by Slovenia (detailed at recital (34) above) include a provision which limits eligibility to installations with an annual electricity consumption of at least 1GWh. Slovenia justifies this extra eligibility criterion on grounds of the administrative and practical issues that would attend to the administration of the scheme in the absence of such a threshold.
- (155) Specifically it is noted that, in Slovenia, final consumers' contributions to the RES support scheme is calculated on the basis of the capacity and voltage level of their connection rather than the amount of electricity consumed. Slovenia introduced this system in 2009 in fulfilment of a commitment to do so in Commission decision in *Case No C 7/2005 on the State aid scheme implemented by Slovenia in the framework of its legislation on qualified energy producers*.<sup>16</sup>
- (156) Given this basis of the Slovenian system, an information system was developed for the collection of support contributions based on connection (in €/kW) rather than on energy consumed (kWh). The ability to monitor and account for the electro-intensity of all consumers in order to determine eligibility for the reductions would entail monitoring the consumption of all consumers which would require the introduction of new information systems supplemental to those which exist to levy support contributions.

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<sup>16</sup> Recital 56.

- (157) Slovenia has therefore submitted that the extra administrative costs associated with a system which does not apply the 1 GWh threshold would outweigh the benefit to the beneficiaries. The Commission is satisfied that this explanation allows for the operability of the scheme and in light of this, can be considered objective, non-discriminatory and transparent.
- (158) Slovenia also requires that in order to be eligible for the scheme beneficiaries must have an average electro-intensity in excess of 5% over the previous three years. This requirement satisfies the requirement in Point 187 of the EEAG of being objective, non-discriminatory and transparent.
- (159) The other supplementary eligibility criteria imposed on prospective beneficiaries require that the beneficiary is not a firm in difficult as defined in the *Guidelines on State aid for rescuing and restructuring firms in difficulty* and that the beneficiary does not have any unrecovered or outstanding debts within the meaning of a European Commission decision declaring aid as unlawful or incompatible with the internal market.
- (160) These requirements directly reflect the requirements of Points 16 and 17 of the EEAG and are objective, non-discriminatory and transparent criteria. The Commission therefore concludes that the extra eligibility criteria imposed by Slovenia comply with Point 187 of the EEAG.

#### 3.3.2.3. Proportionality under Section 3.2.7. of the EEAG

- (161) In respect of Part B of the measure, Point 188 EEAG provides that the aid will be considered proportionate if the beneficiaries pay at least 15% of the additional costs without reduction.
- (162) In the present case beneficiaries on Annex 3 of the EEAG will have their contribution reduced to 30% of the additional costs. This exceeds the 15% and so complies with Point 188 of the EEAG.
- (163) Point 189 of the EEAG acknowledges, however, that given the significant increase in renewable surcharges in recent years, an own contribution of 15% of the full renewable surcharge might go beyond what undertakings particularly affected by the burden can bear. Therefore, when needed, Member States have the possibility to further limit the amount of costs resulting from financing aid to renewable energy to be paid at an undertaking level to 4% of the gross value added of the undertaking concerned.
- (164) In light of Point 189 of the EEAG, Slovenia has set a contribution which is limited to 4% of gross value added for beneficiaries with an electro-intensity of over 20% on Annex 5 of the EEAG. As outlined in recital (15) the 4% limitation will apply to all eligible undertakings in line with Point 190 of the EEAG..
- (165) The reductions in the present case are to be granted as a reduction from charges. Therefore the provisions of Point 192 of the EEAG require that an *ex-post* monitoring system is put in place to ensure that any over-payment is remedied and repaid before 1 July of the following year. Slovenia has undertaken to fulfil this requirement, per recital (64) above, and so complies with Point 192.
- (166) The Commission therefore concludes that the notified measure complies with the provisions of Section 3.7.2 of the EEAG.

### 3.3.3. Transparency

- (167) Point 27(g) of the EEAG requires that the aid measure is transparent per Section 3.2.7 of the EEAG. Slovenia has committed to publishing all of the information required by Point 104 of the EEAG in line with the requirements of Point 106 of the EEAG. The notified measure therefore complies with Section 3.2.7.

### 3.3.4. Other TFEU provisions

- (168) Point 29 of the EEAG provides that if a State aid measure or the conditions attached to it, including its financing method when it forms an integral part of the measure, entails a non-severable violation of Union law, the aid cannot be declared compatible with the internal market.
- (169) Point 29 of the EEAG draws specific attentions to Articles 30 and 110 TFEU, providing that any levy that has the aim of financing a State aid measure would need to be found to be in compliance with both.
- (170) The notified measure is financed by means of a levy and accordingly the Commission has examined its compliance with Articles 30 and 110 TFEU.
- (171) 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 TFEU if the revenues from such a charge is intended to support activities which specifically benefit taxed domestic (and not imported) products.<sup>17</sup>
- (172) In the present case, the notified measure is only available to support activities which benefit domestic products, i.e. RES and CHP electricity generated in Slovenia. However, per its commitment in the Commission decision in *Case No C 7/2005 on the State aid scheme implemented by Slovenia in the framework of its legislation on qualified energy producers*,<sup>18</sup> Slovenia has introduced a system whereby individual contributions to the support scheme are calculated on the basis of a consumer's connection capacity, rather than their consumption. As such, the levy which funds the support scheme is not imposed on domestic and imported products but rather Slovenian products only.
- (173) Therefore the Commission concludes that the structure of the financing method which underpins the notified measure, specifically the manner in which levies are imposed, does not contravene Articles 30 and/or 110 TFEU.

### 3.3.5. Conclusion with regard to the compatibility of the measure

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

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<sup>17</sup> See Joined Cases C-128/03 and C-20/03 *AEM* [2005] ECR-I-2886; Case C-206/06 *Essent* ECR-I-0000. See also Case 47/69 *France v Commission*, EU: C 1970:60 and Case SA.38632 (2014/N) *Germany – EEG 2014* OJ C 325 2015.

<sup>18</sup> Recital 56(i).

#### 4. CONCLUSION

- (175) The Commission concludes on the basis of the foregoing assessment that the measure is compatible with the internal market pursuant to Article 107(3)(c) TFEU.
- (176) 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:

European Commission,  
Directorate-General Competition  
State Aid Greffe  
B-1049 Brussels  
[Stateaidgreffe@ec.europa.eu](mailto:Stateaidgreffe@ec.europa.eu)

Yours faithfully  
For the Commission

Margrethe VESTAGER  
Member of the Commission