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Subject: State Aid SA.54887 (2020/N) – Croatia – Reduction in the amount of charge for renewable energy sources

Excellency,

1. PROCEDURE

- (1) On 29 April 2020, following pre-notification contacts, the Croatian authorities notified the Commission, in accordance with Article 108(3) of the Treaty on the Functioning of the European Union (“TFEU”), of the above-mentioned measure, consisting of a support scheme reducing, for energy intensive users (“EIUs”), the charges paid on electricity to contribute to the financing of electricity production from renewable energy sources (“RES”).
- (2) On 26 May 2020, Croatia waived its right under Article 342 of the TFEU in conjunction with Article 3 of EC Regulation No 1/1958¹ to have the decision adopted and notified in Croatian and agreed that the decision be adopted and notified in English.

¹ 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. DETAILED DESCRIPTION OF THE MEASURE

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

- (3) The notified measure concerns a reduction for EIUs in the payment of the charge aimed at financing electricity production from RES² (“RES charge”). This charge is paid by all final electricity consumers, including the EIUs, as a fixed component for each kWh of electricity sold.
- (4) The RES charge is collected from final consumers by electricity suppliers and transferred to a special account that is managed by the State-owned electricity energy market operator, Hrvatski operator tržišta energijed.o.o. (HROTE). HROTE is the granting authority, entirely controlled by the Republic of Croatia and in charge of organising energy markets. HROTE is subject to monitoring by the regulator, the Croatian Energy Regulatory Agency (CERA), regarding the conclusion of contracts with the RES producers and the collection of charges for the RES financing.
- (5) The amount of the RES charge is determined by a decision of the Croatian government covering a period of one year starting on October 31. The RES charge is established taking into account a HROTE’s revenue and expenditure plan for the coming year, including projections for at least three years regarding RES development. The RES charge currently amounts to HRK 0.105/ kWh.

2.2. Reduction in the financing of the support system

- (6) All final consumers are obliged to pay the RES charge. However, by way of exception, since 1 November 2013, on the basis of the Ordinance on fee for supporting electricity generation from RES and cogeneration³, undertakings that are obliged to obtain a greenhouse gas emission permit in accordance with the Air Protection Law (“GHG payers”) are entitled to apply for a reduced charge. Currently, the RES charge applicable to GHG payers is HRK 0,007 / kWh, i.e. 6,7% of the charge paid by other consumers.
- (7) Since not all GHG payers belong to sectors included in Annex 3 and 5 of the Guidelines on State aid for environmental protection and energy 2014-2020⁴ (“EEAG”) and are therefore considered as energy intensive users (EIUs), by the present notification, Croatia intends to notify the adjustment plan of these GHG payers in order to bring these RES charge reductions in line with State aid rules, as well as to grant a reduction to a new category of consumers: EIUs.

² On 1 September 2015 the Commission adopted a decision in case SA.38406 (2014/N) –Croatia - Renewables support scheme in Croatia 2014-2015 C(2015)6141 final.

³ OG 128/2013. According to Croatian authorities, Croatia does not and has not provided financial support to cogeneration installations. Under the RES scheme approved by the Commission (see footnote 5) there were some cogeneration RES plants that received aid, but this was for producing electricity from renewable sources, not because of producing electricity and heat through cogeneration.

⁴ OJ C 200, 28.6.2014, p. 1–55.

- (8) Croatia argues that the objective of the measure is to maintain competitiveness of EIUs, which are characterized by a high electro-intensity and electricity consumption. Hence, they may be eligible for a reduction of the RES charge under the conditions and in the manner prescribed by the national legislation.
- (9) According to the Croatian authorities, the RES charge, as it is currently designed, accounts for on average 17% to 20% of the total electricity bill of EIUs. For comparison, the share of the RES charge for households ranges between 10-12%.
- (10) The reduction will be applicable to companies in sectors belonging to both Annex 3 and 5 of the EEAG. With regard to EIUs having the main activity in the sectors listed in Annex 3 of the EEAG, Croatia intends to grant different reductions from the RES charge depending on the electro-intensity of individual beneficiaries. This is due to the fact that EIUs with a higher energy-intensity are affected to a greater extent by the RES charge, which may in turn have a greater impact on their competitiveness.
- (11) Therefore, according to the Croatian authorities, the application of different reduction rates is the result of a detailed analysis of the incentive system. The mechanism provides the following reduction rates:
- 40% of the RES charge for beneficiaries with an electro-intensity between 5% and 10%;⁵
 - 60% of the RES charge for beneficiaries with an electro-intensity between 10% and 20%;
 - 80% of the RES charge for beneficiaries with an electro-intensity above 20%.
- (12) As regards companies having the main activity in the sectors listed in Annex 5 of the EEAG, they will have to demonstrate an electro-intensity of at least 20% in order to be eligible for a reduction of 80% of the RES charge.
- (13) The implementation of the measure is expected to reduce the EIUs' cost of electricity between 8.1% and 11.5% as compared to current electricity costs.

2.3. Legal basis

- (14) The national legal basis of the notified scheme are the Renewable Energy Sources and High Efficiency Cogeneration Act⁶ ("RES Act") and the Proposal for a Regulation on the criteria for the payment of a reduced renewable energy sources and high efficiency cogeneration charge ("draft Regulation").

⁵ Only for beneficiaries which have their NACE code in Annex 3 of the EEAG. The Republic of Croatia has applied the principle of gradual support to certain enterprises (not sectors) belonging to the list of sectors in Annex 3 of the EEAG by reducing the RES incentive fee depending on the class of electrical intensity (5-10%, 10-20%, over 20%).

⁶ Official Gazette, Nos. 100/15 and 111/18

2.4. Beneficiaries

- (15) The beneficiaries of the notified reductions of the RES charge are undertakings that satisfy the following cumulative requirements:
- belong to a sector listed under Annexes 1 and 2 of the draft Regulation, which correspond to the list of sectors laid down in Annex 3 and 5 of the EEAG;
 - consume more than 1 GWh / year;
 - file a certificate of the commercial court competent for the undertaking proving that the bankruptcy or liquidation procedure has not been open or conducted against the undertaking;
 - file a certificate of a tax administration on the payment of all due taxes and obligations regarding pension and health insurance and other public benefits issued within 30 days from the date of submitting the offer.
- (16) The Croatian authorities explained that the estimated administrative cost of applying and obtaining the reduction makes it unprofitable for EIUs with an electro-intensity below the threshold of 1 GWh/year⁷.
- (17) Croatia estimates that around 150 undertakings will be eligible for reductions from the RES charge.

2.5. Functioning of the scheme and aid granting authority

- (18) In order to obtain a reduction from the RES charge, undertakings will submit to HROTE an application for a reduced RES charge and provide the data about their GVA, annual electricity consumption and annual electricity costs.
- (19) The application must be accompanied by the following documents:
- certificate of the commercial court competent for the undertaking proving that the bankruptcy or liquidation procedure has not been open or conducted against the undertaking,
 - certificate of a tax administration on the payment of all due taxes and obligations regarding pension and health insurance and other public benefits issued within 30 days from the date of submitting the offer,
 - evidence of main activity obtained from the Croatian Bureau of Statistics,
 - annual financial report (profit and loss account) for the past three fiscal years submitted to the competent Financial agency as a part of an annual financial report, that is, if the undertaking has been operating for less than three years,

⁷ Based on the information provided by Croatia, the savings resulting from the reduction of the RES charge for an EIU with the electricity consumption of 1 GWh/year is in the range of 5.000 - 11.000 EUR/year (depending on EIU's electro-intensity). Croatia estimates that the administrative cost for the process of applying for the reduction is in a comparable range (including staff cost, charges, etc.). Croatia notes that for an EIU with the electricity consumption of 0.5 GWh/year the cost of applying for the reduction would be lower than the actual benefit (2.500 - 5.500 EUR/year).

for all years of activity, the notarised statement by the undertaking on the total number of state aid received in the past three fiscal years,

- the notarised statement by the undertaking on a total amount of paid excise duties for the past three fiscal years, all monthly reports on paid excise duties for the past three fiscal years and, if the undertaking is an excise taxpayer in the Republic of Croatia, all electricity costs of the undertaking (for all locations registered with the undertaking) for the same period, as well as annual financial reports whose annexes include copies of all monthly electricity bills based on which a total electricity cost has been calculated.
- (20) Undertakings should submit the application in the period from 1 September to 1 December of the respective year. HROTE takes a decision on the application, which is valid for one year and is published on its website. The reductions are applied ex ante on the RES charge due in the following 12 months. However, as regards the duration of the scheme, the Croatian authorities have confirmed that the reductions will not apply beyond the 31 December 2021, as mentioned in recital (41) below.
- (21) In order to renew its right to obtain the reduction, an undertaking is obliged to submit an application no later than 60 days before the decision's expiry. The application should be accompanied by the following evidence:
- documents mentioned in recital (19) above,
 - annual financial report submitted to the Financial agency for the year preceding the year of application,
 - annual electricity consumption in the last calendar year preceding the year of application,
 - annual electricity costs in the last calendar year preceding the year of application.
- (22) Once the reduction is granted by HROTE, the reductions will be applied by the electricity suppliers to EIUs in their electricity bills. The reduction is calculated on the basis of each EIU's actual monthly consumption⁸.
- (23) Pursuant to Articles 12- 16 of the draft Regulation, the suppliers have the obligation to levy on EIUs the reduced RES charge from the date on which the decision by HROTE starts to apply.
- (24) HROTE should establish and maintain the register for undertakings eligible for reductions from the RES charge ("Register").
- (25) Furthermore, HROTE can, ex officio or following a proposal from a legal or natural person with a legitimate interest, ask the beneficiary of the aid or the operator of the distribution or the transmission system or the competent financial institution to

⁸ See section 5, point 5 of the draft Regulation: The distribution system operator and the transmission system operator shall be obliged, separately by category of customers, to submit to the electricity market operator information on the total quantities of electricity delivered by the suppliers to their customers in the previous month.

provide information in order to determine whether the right to a reduced RES charge has been properly exercised.

2.6. Adjustment plan

- (26) As mentioned in recital (6) above, since 1 November 2013 based on the Ordinance on fee for supporting electricity generation from RES and cogeneration, GHG payers have been entitled to benefit from a reduction from the RES charge. The only eligibility condition to receive this reduction was the requirement to obtain the permit for greenhouse gases emissions under the Air Protection Law. Following the reduction, the GHG payers paid HRK 0.005 kWh, i.e. 14.29% of the full RES charge.
- (27) As of 1 November 2017, based on the new Ordinance on fee for supporting electricity generation from RES and cogeneration⁹, the charge for the GHG payers was reduced to HRK 0.007 kWh, i.e. 6.67% of the full RES charge.
- (28) Any GHG payer holding a valid permit for greenhouse gases emissions can apply to the electricity supplier and request to charge him a reduced RES charge. The supplier notifies HROTE of such request.
- (29) Based on the information provided, 50 GHG payers in Croatia are currently paying the reduced fee. While most of the GHG payers belong to sectors listed in Annex 3 and 5 of the EEAG, some beneficiaries do not belong to these sectors.
- (30) The table below presents the amount of the full RES charge paid by end consumers and the reduced RES charge paid by the GHG payers during the period 2007-2020.

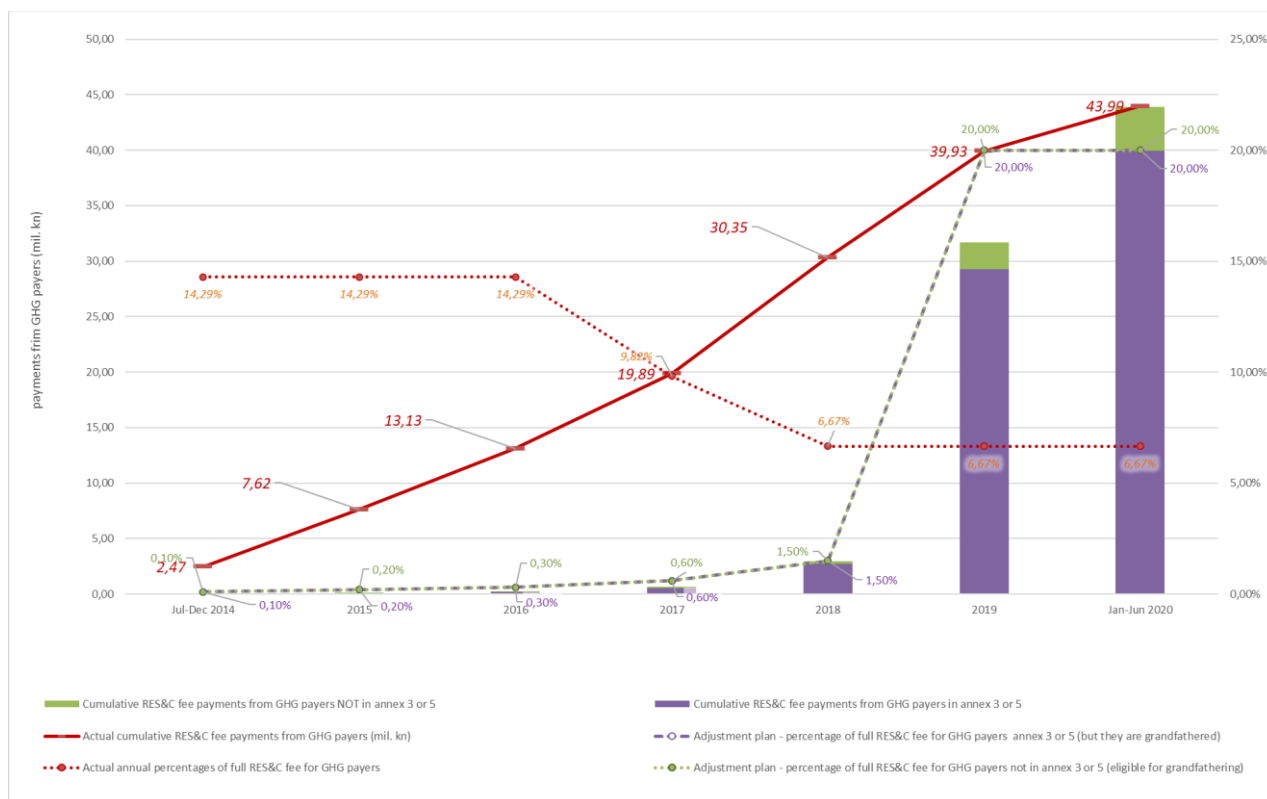
⁹ OG 87/2107

Year	Month	Amount of the RES charge	
		End consumers (kn/kWh)	GHG payers (kn/kWh)*
2007.	7.-12.m	0,0089	0,0089
2008.	1.-12.m	0,0089	0,0089
2009.	1.-12.m	0,0089	0,0089
2010.	1.-12.m	0,005	0,005
2011.	1.-12.m	0,005	0,005
2012.	1.-12.m	0,005	0,005
2013.	1.- 10.m	0,005	0,005
	11.- 12.m	0,035	0,005
2014.	1.-12.m	0,035	0,005
2015.	1.-12.m	0,035	0,005
2016.	1.-12.m	0,035	0,005
2017.	1.-8.m	0,035	0,005
	9.-12.m	0,105	0,007
2018.	1.-12.m	0,105	0,007
2019.	1.-12.m	0,105	0,007
2020.	1.m- until adoption the Commission decision in the present case	0,105	0,007

Source: Croatian authorities

- (31) Based on the information provided by Croatia, it appears that even if some GHG payers are EIUs (i.e. belong to sectors listed in Annex 3 and 5 of the EEAG) and could benefit from a RES charge reduction on the basis of the EEAG, they currently pay less than the minimum of 15% of the total charge required by point 188 of the EEAG. In order to bring the reductions granted to GHG payers in line with the provisions of the EEAG, Croatia submitted an adjustment plan starting from 1 July 2014 (i.e. the date of entry into force of the EEAG) and until 1 July 2020.
- (32) Pursuant to the adjustment plan, the RES charge for all GHG payers progressively increases as of 1 July 2014 until reaching 20% of the total charge on 1 January 2019. As of 1 January 2019, all GHG payers are required to pay 20% of the total RES charge, independently of whether they are EIUs (thus belong to sectors in Annex 3 and 5) or not.
- (33) As regards beneficiaries with the main activity in sectors falling outside of Annex 3 and 5 of the EEAG, Croatia has decided to grandfather them in line with the provisions of point 197 of the EEAG. However, if after June 2020 any of the grandfathered GHG payers cease obtaining a greenhouse gas emission permit, hence does not qualify as a GHG payer, this undertaking will lose its acquired rights to pay 20% of the RES charge. Therefore, it will be subject to the full RES charge.

- (34) Croatia claims that the payments made by the GHG payers between 1 July 2014 and 30 June 2020 were sufficient to fulfil their obligations according to the EEAG. To substantiate this claim, Croatia has calculated the amount of the RES charge that was effectively paid by GHG payers and compared it with the amounts of RES charge that would be due under the adjustment plan.
- (35) Pursuant to the submitted adjustment plan, a progressive adjustment is imposed towards a contribution of 20% of the RES charge. The progression curve of the adjustment plan will be the same for both the GHG payers having the main activity in sectors listed in Annex 3 or 5 of the EEAG and the GHG payers with the main activity in sectors falling outside of Annex 3 and 5 of the EEAG.
- 0.1% of full RES charge during 1 July 2014 – 31 December 2014,
 - 0.2 % of full RES charge in 2015,
 - 0.3 % of full RES charge in 2016,
 - 0.6 % of full RES charge in 2017,
 - 1.5 % of full RES charge in 2018,
 - 20 % of the full RES charge from 1 January 2019.
- (36) Croatia has submitted the data showing the levels of the RES charge paid by GHG payers and the progression curve. The graph below depicts the amounts of the RES charge effectively paid by GHG payers in comparison with the theoretical contributions under the adjustment plan. It presents the actual cumulative payments made by GHG payers (red line), actual percentage of the RES charge by GHG payers (dotted red line), and the proposed adjustment plan (cumulative payments - purple and green columns- and the progression in the charge's share -purple and green dashed lines).



Source: Croatian authorities

- (37) Croatia submits that by summing up the actual historical payments and future estimated payments until 30 June 2020, GHG payers are estimated to have paid in total HRK 43.99 million.
- (38) Pursuant to the submitted adjustment plan, given that the percentage of the RES charge paid by GHG payers would initially be very low and it would gradually increase from 0,1% to 20% of the RES charge, the contribution of the GHG payers would amount to HRK 43.90 million¹⁰.
- (39) The table below shows that the total payments to be made by all GHG payers according to the proposed adjustment plan are lower than the actual total payments made for the period 1 July 2014 to 30 June 2020. Therefore, Croatia submits that the past payments were sufficient to cover GHG payer's obligations and that it does not need to recover any undue aid amounts. Croatia has committed that from 1 July 2020, GHG payers would pay 20% of the full RES charge.

¹⁰ From July 2014 to February 2020, real data were used, while in the period from March to June 2020, the price had been charged, assuming a similar level of electricity consumption of GHG payers.

period	Electricity consumed by GHG payers (TWh)	Actual annual RES&C fee payments from GHG payers (million Kuna)	Actual annual percentages of full RES&C surcharge for GHG payers	Adjustment plan - percentage of full RES&C surcharge for GHG payers listed in annex 3 or 5 (grandfathered)	Adjustment plan - percentage of full RES&C surcharge for GHG payers not listed in annex 3 or 5 (grandfathered)	Adjustment plan - RES&C surcharge payments from GHG payers in annex 3 or 5 (million Kuna)	Adjustment plan - RES&C surcharge payments from GHG payers NOT in annex 3 or 5 (million Kuna)	Actual cumulative RES&C surcharge payments from GHG payers (million Kuna)	Adjustment plan - Cumulative RES&C surcharge payments from GHG payers in annex 3 or 5 (million Kuna)	Adjustment plan - Cumulative RES&C surcharge payments from GHG payers NOT in annex 3 or 5 (million Kuna)	Adjustment plan - Total cumulative RES&C payments from GHG payers (million Kuna)
Jul-Dec 2014	0.49	2.47	14.29 %	0.10%	0.10%	0.02	0.0005	2.47	0.02	0.00	0.02
2015	1.03	5.15	14.29 %	0.20%	0.20%	0.07	0.0024	7.62	0.09	0.00	0.09
2016	1.10	5.51	14.29 %	0.30%	0.30%	0.11	0.01	13.13	0.19	0.01	0.21
2017	1.18	6.76	9.82% **	0.60%	0.60%	0.37	0.05	19.89	0.57	0.06	0.63
2018	1.49	10.46	6.67%	1.50%	1.50%	2.18	0.18	30.35	2.75	0.24	2.98
2019	1.37	9.58	6.67%	20.00 %	20.00 %	26.54	2.19	39.93	29.29	2.43	31.71
Jan - Jun 2020*	0.58	4.06	6.67%	20.00 %	20.00 %	10.69	1.50	43.99	39.97	3.92	43.90

Source: Croatian authorities

- (40) Croatia argues that, as shown in the table above, the payments required from GHG payers in the period July 2014 – June 2020 amount to HRK 43.90 million. The actual payments made by GHG payers in the same period are estimated to total HRK 43.99 million. Therefore, Croatia claims that payments of GHG payers in the proposed adjustment plan correspond to the actual cumulative payments.

2.7. Duration and budget

- (41) Croatia indicated that the measure as regards the addition of a new category of beneficiaries (the EIUs) will be implemented only after its approval by the Commission. Therefore, that measure will be in place after the date of notification of this decision to Croatia and until 31 December 2021.
- (42) As regards the measure covered by the adjustment plan, it applied since 1 July 2014 and it is scheduled to end on 31 December 2021.
- (43) The Croatian authorities estimate that the total budget of the measure resulting from the decrease in revenues for the EIUs will not exceed HRK 75 million annually (ca. EUR 10 million).

2.8. Cumulation

- (44) Croatia confirmed that the aid could not be cumulated with other types of aid for the same eligible costs.
- (45) Should the cumulation exceed the maximum aid intensity, HROTE would reduce the amount of the aid appropriately (within the decision specified in recital (20) above).
- (46) When a beneficiary submits its application for a reduced RES charge, it is obliged to present a declaration, certified by a notary, on the total amount of State aid which it has been granted in the three previous fiscal years. In this way, HROTE will be able to establish whether the applicant has received any aid and, if so, which state aid. This information will then be used to determine whether the same eligible costs are being covered.

2.9. Deggendorf conditions and undertaking in difficulties

- (47) The Croatian authorities have confirmed that the aid could not and cannot be granted to undertakings with an outstanding state aid recovery order. Article 7 of the draft Regulation states that beneficiaries must demonstrate that they have no debts or unsettled debts arising from a Commission decision on the illegality of aid or its incompatibility with the internal market. Should this requirement not be met, they will be unable to receive a reduction of the RES charge.
- (48) The Croatian authorities have as well confirmed that the aid could not and cannot be granted to undertakings in difficulty within the meaning of the EEAG. Following Article 7 of the draft Regulation, the undertaking, for being eligible to the notified reduction, should not be in difficulty in accordance with the EEAG.

2.10. Transparency

- (49) At least once a year, by 31 March of the respective year, HROTE will publish on its website (www.hrote.hr, <https://mzoe.gov.hr/>) a report on the collection, billing and distribution of the reductions, for the previous year.

3. ASSESSMENT OF THE AID

3.1. Existence of State aid

- (50) Article 107(1) of the 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. Selective advantage

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

subsidies in the strict meaning of the word, are similar in character and have the same effect are considered to constitute aid¹¹.

- (52) The Court has also ruled¹² that in case of exemptions from charges, in order to prove an advantage is selective, the Commission has to prove that the measure at stake creates differences between undertakings that, with regard to the objective of the measure in question, are in a comparable factual and legal situation. The concept of aid does not encompass measures creating different treatment of undertakings in relation to charges where that difference is attributable to the nature and general scheme of the system of charges in question. The burden of proof for that latter part of the test is on the Member State.
- (53) In the present case, the RES support scheme is financed through a charge imposed on electricity consumption. Therefore, electricity consumers would have to bear the cost of financing the RES scheme by paying the respective component included in their electricity bill.
- (54) EIUs and the companies grandfathered in the adjustment plan receive an economic advantage because the State grants them a relief in the form of a reduction of the RES charge which they would normally have to bear. As a result, depending on their electro-intensity, these companies pay a reduced RES charge, i.e. 20%, 40% or 60% of the full RES charge respectively (see above recital (11)).
- (55) The measure is selective because only companies active in sectors specified in Annexes 1 and 2 of the draft Regulation, which correspond to the list of sectors included in Annex 3 and 5 of the EEAG (see also recital (15) above), and companies grandfathered in the adjustment plan are eligible for the aid (see recital (33) above).

3.1.2. State resources and imputability

- (56) Article 107(1) of the TFEU requires that State aid is granted by a Member State or through State resources. Since the notified scheme consists of a reduction of a charge that would otherwise be due, Croatia is foregoing State resources by granting such aid.
- (57) In its *Vent de Colère* judgment, the Court of Justice recalled that "[t]he concept of 'intervention through State resources' is intended to cover, in addition to advantages granted directly by the State, those granted through a public or private body appointed or established by that State to administer the aid"¹³.
- (58) The Commission notes that the State via HROTE exercises control over the reductions from the RES charge. Croatia has established the rules for the calculation of the reduction of the RES charge in Article 43 of the RES Act and in the draft Regulation. Furthermore, the eligible companies submit an application to HROTE, which verifies the request and the eligibility of the companies, and

¹¹ Judgement in *Banco Exterior de España*, Case C-387/92 [1994] ECR I-877, paragraph 3; Case C-75/97 *Belgium v Commission* [1999] ECR I-3671, paragraph 23.

¹² Judgement in *Netherlands v Commission*, Case C-159/01 *Netherlands v Commission* [2004] ECR I-4461, paragraph 42; Case C-279/09 P, *NOx emission trading scheme*, paragraph 62.

¹³ Judgement in *Association Vent de Colère !*, Case C-262/12, EU:C:2013:851, paragraph 20.

delivers the administrative order approving them and granting the aid (see recitals (18) - (25) above).

- (59) For all the reasons set out above, the Commission concludes that the reduction of burdens arising from the funding of the RES support scheme for eligible companies involves State resources. The Commission observes in particular that the State, through HROTE, can control, direct and influence the administration of the reductions at stake: the State intervenes both at the level of the advantage (i.e. the charge reduction) and its financing. The State has defined in legally binding provisions to whom the advantage is to be granted, the eligibility criteria and the level of support, but it also controls the financial resources to cover the costs of the support. The State has also decided that certain companies will be grandfathered and pay 20% of the total RES charge as from 1 January 2019.
- (60) With regard to the reduced RES charges for EIUs, the reductions to EIUs are granted by HROTE and the correct implementation of the reductions is monitored by the regulator (CERA).
- (61) The reduced RES charges for the eligible companies are by definition imputable to the State as they are established in the RES Act and the draft Regulation, which are acts of public institutions.

3.1.3. Effect on trade and impact on competition

- (62) The companies benefitting from the reduced RES charge are active in sectors open to competition and as such, the measures at stake are likely to distort the competition in the internal market and affect trade between Member States.

3.1.4. Conclusion with regard to the existence of State aid

- (63) In the light of the above assessment, the Commission concludes that reductions for eligible companies from the charge to finance RES schemes constitute State aid within the meaning of Article 107(1) TFEU.

3.2. Lawfulness of the aid

- (64) The reductions for EIUs from the RES charge have not been put into effect prior to this decision.
- (65) However, the Commission regrets that Croatia has put in place reductions from the RES charge granted to the GHG undertakings since 1 November 2013, breaching its obligation under Article 108(3) TFEU. Since aid had been granted before Croatia notified it, such aid is unlawful.

3.3. Compatibility of the aid

- (66) As the notified scheme grants EIUs reductions for part of the RES charge, the Commission has assessed the compatibility of the notified aid scheme based on the EEAG, and in particular section 3.7.2 (Aid in the form of reductions in the funding of support for energy from renewable sources).

3.3.1. Aid in the form of reductions in the funding of support for energy from renewable sources for EIU

- (67) Reductions granted to EIUs aim at securing a sufficient financing base for the support measures themselves. 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. Those targeted reductions may be needed to secure a sufficient financing base for support to energy from renewable sources and hence help reaching the renewable energy targets set at EU level.
- (68) Under Section 3.7.2 of the EEAG, reductions granted to energy-intensive users on electricity charges used to finance support to renewables are considered as compatible if they are:
- limited to sectors and undertakings that are electro-intensive and exposed to international trade as identified on the basis of the criteria set out in points 185-186 of the EEAG.
 - proportionate, i.e. limited to the reduction levels set out in points 187 to 190 of the EEAG.
- (69) Compatibility with those criteria is examined below.

3.3.1.1. Eligibility: aid limited to sectors and undertakings that are electro-intensive and exposed to international trade

- (70) Points 185-186 of the EEAG provide that the aid in the form of reductions in the funding of support for energy from renewable sources should be limited to sectors that are exposed to a risk to their competitive position due to the costs resulting from the funding of support to energy from renewable sources as a function of their electro-intensity and their exposure to international trade. Accordingly, the aid can be granted if the undertaking belongs to the sectors listed in Annex 3 to the EEAG. The aid can also be granted to undertakings active in sectors with a trade intensity of at least 4% at Union level if the undertaking has an electro-intensity of at least 20%.
- (71) It follows from information provided by the Croatian authorities, set out in recital (15) above, that the aid will be granted to EIUs fulfilling the above-mentioned eligibility requirements. As mentioned in recital (11) above, the reduction of the RES charge under the notified scheme depends on the electro-intensity of the individual companies. In particular, the Croatian authorities confirmed that the electro-intensity of the beneficiaries would be calculated according to the requirements of Annex 4 of the EEAG.
- (72) The Croatian authorities also require that the beneficiary proves that no bankruptcy or liquidation procedure has been open or conducted against the undertaking and that all due taxes and obligations regarding pension and health insurance and other public benefits, including any outstanding state aid recovery orders, have been paid. These requirements are in line with the Deggendorf conditions.

- (73) As explained in recital (48) above, the Croatian authorities have confirmed that the aid could not and cannot be granted to undertakings in difficulty which directly reflect the requirements of point 16 of the EEAG.
- (74) In addition, where Member States impose additional eligibility criteria, point 187 of the EEAG provides that Member States need to ensure that within the eligible sectors, the choice of beneficiaries is made on the basis of objective, non-discriminatory and transparent criteria and that the aid is granted in principle in the same way for all competitors in the same sector if they are in a similar factual situation.
- (75) Eligibility under the notified scheme is limited to undertakings with an annual electricity consumption of at least 1 GWh per year. The Commission observes that this threshold has been introduced for reasons of administrative simplification. According to the information provided by Croatian authorities, for undertakings with an annual consumption below this threshold the administrative cost of applying for a reduction is higher than its benefits. The Commission considers that this additional criterion is objective and transparent and does not discriminate between undertakings in a similar factual situation.

3.3.1.2. Proportionality

- (76) Point 188 of the EEAG provides that the aid is considered proportionate if the aid beneficiaries pay at least 15% of the financing costs without reduction.
- (77) The Commission takes note of the fact that Croatia intends to apply different reduction rates depending on the electro-intensity of individual beneficiaries. The reduction rates will as follows: 40%, 60% and 80% of the total RES charge.
- (78) As undertakings eligible for the aid would pay at least 20% of the full RES charge in line with point 188 of the EEAG, the measure is found to be proportionate.
- (79) As explained under recital (22), the reduction from RES charges is passed to end-consumers through their electricity suppliers, on the basis of the information provided by the TSO/DSOs on their monthly actual electricity consumption. Since the calculation of the aid is based on the actual consumption data, the risk of overcompensation is limited. In addition, as mentioned in recital (25), HROTE can do further ex-post checks to determine whether the right to a reduced RES charge has been properly exercised. Therefore, the Commission considers that the requirements under point 192 of the EEAG are complied with.

3.3.2. *Transitional rules for aid granted in form of the reduced RES charge to GHG undertakings*

- (80) In line with points 193 and 194 of the EEAG, Member States have to apply eligibility and proportionality criteria set out in Section 3.7.2 of the EEAG at the latest by 1 January 2019. Aid granted in respect of a period before that date will be considered compatible if it satisfied the same criteria or if it complies with an adjustment plan.
- (81) According to point 195 of the EEAG, to avoid an abrupt disruption for individual undertakings, such adjustment shall entail progressive adjustment to the aid levels resulting from the application of the eligibility and proportionality criteria set out

in section 3.7.2. Point 196 of the EEAG clarifies that to the extent that aid was granted in respect of a period before the date of application of the EEAG, the adjustment plan shall also provide for a progressive application of the eligibility and proportionality criteria for that period.

- (82) Point 197 indicates that to the extent that aid in the form of reduction or exemption from the burden related to funding support for electricity from renewable sources was granted before the date of application of the EEAG to undertakings that are not eligible under section 3.7.2 of the EEAG, such aid can be declared compatible provided that the adjustment plan foresees a minimum own contribution of 20% of the additional costs of the charge without reduction, to be established progressively and at the latest by 1 January 2019.
- (83) The Commission notes that since 1 November 2013 GHG payers have been paying a reduced RES charge below the minimum limit of 15% of the additional costs of the RES charge without reduction, as laid down in point 188 of the EEAG.
- (84) The Commission notes that while most of the 50 GHG payers that benefit from the reductions belong to sectors listed in Annex 3 and 5 of the EEAG, some GHG payers do not belong to these sectors.
- (85) Therefore, the Commission notes that for the aid already granted from 1 July 2014 (entry into force of the EEAG) and that will continue to be granted until the draft Regulation enters into force (i.e. as of 1 July 2020 as per the commitment by the Croatian authorities), the Croatian authorities submitted an adjustment plan in which they verified to what extent the reductions complied with the EEAG requirements.
- (86) For this assessment, Croatia submitted a progression curve showing the hypothetical rates that the GHG payers would have had to pay.
- (87) The adjustment plan covers the period from 1 July 2014 until 30 June 2020 and applies to GHG payers having the main activity in sectors listed in Annex 3 and 5 of the EEAG. Beneficiaries who did not qualify as EIUs within the meaning of points 185-187 of the EEAG are also included in the adjustment plan following the grandfathering possibility provided under point 197 of the EEAG.
- (88) The curve shows a progressive adjustment of the RES charge paid by all GHG payers up to 20 % of the costs of the RES charge in January 2019, as required by the EEAG. In this respect, the Commission takes note of the commitment by the Croatian authorities that the adjusted reductions would be applicable as of 1 July 2020.
- (89) The Commission notes that according to the hypothetical curve, Croatia has calculated the actual and due payments of the RES charge paid by GHG payers between 1 July 2014 and 30 June 2020. The total contribution of the GHG payers has been compared to the minimum contribution required by the EEAG.
- (90) The calculations provided by Croatia show that the total contribution of GHG payers amounts to HRK 43.99 million. On this basis, the Commission observes that this amount corresponds, and even slightly exceeds, to the amount of payments that the beneficiaries would have had to pay pursuant to the adjustment plan (HRK 43.90 million).

- (91) The Commission considers that Croatia has demonstrated that the past payments made by GHG payers have been a sufficient contribution to the financing of the RES scheme and that no additional payments should be required from the GHG payers pursuant to the adjustment plan.
- (92) The Commission notes that the submitted adjustment plan was drafted by the Croatian authorities taking due account of the above EEAG requirements.
- (93) Furthermore, the notified measure also requires that the beneficiary proves that the bankruptcy or liquidation procedure has not been open or conducted against the undertaking and that all due taxes and obligations regarding pension and health insurance and other public benefits have been paid. The Commission considers that this additional criterion is objective and transparent and does not discriminate between undertakings in a similar factual situation.
- (94) The Commission takes note that the aid could not and will not be granted to undertakings in difficulty within the meaning of points 19 to 24 of the Rescue and Restructuring Guidelines.¹⁴
- (95) Finally, the Commission observes that the aid could not be granted to undertakings with an outstanding state aid recovery order. Should this requirement not be met, the beneficiaries would be unable to receive a reduction of the RES charge. This is therefore in line with point 17 of the EEAG.
- (96) The Commission notes that the Croatian authorities did not notify the adjustment plan within the deadline established in point 200 of the EEAG. The Commission considers that the deadline at issue is a procedural requirement that was intended to invite Member States to adjust the existing schemes already in place to the new compatibility provisions established in the EEAG, to the extent that those schemes involved State aid. The Commission also notes that compliance with such deadline does not affect the functioning of the adjustment plan as foreseen in Section 3.7.3 of the EEAG.
- (97) Based on the above, the Commission considers that the adjustment plan submitted by the Croatian authorities complies with Section 3.7.3 of the EEAG.

4. 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: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

¹⁴ Commission Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty, OJ C 249, 31.7.2014, p. 1.

Your request should be sent electronically to the following address:

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Directorate-General Competition
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Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President