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**Subject: State Aid SA.56831 (2021/N) – Denmark
Multi-technology RES tenders 2021-2024**

Excellency,

1. PROCEDURE

- (1) Following pre-notification contacts, by electronic notification of 4 March 2021, Denmark notified, pursuant to Article 108(3) of the Treaty of the Functioning of the European Union (TFEU), an aid scheme to promote electricity from renewable energy sources ('RES') through technology-neutral tendering procedure in the period 2021-2024.
- (2) On 20 April 2021, Denmark agreed to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union (TFEU) in conjunction with Article 3 of Regulation (EEC) No 1/1958¹, and to have this decision adopted and notified in English.

2. DESCRIPTION OF THE SCHEME

- (3) The scheme aims at promoting the production of electricity from RES. The supported RES technologies are onshore wind turbines, open door offshore wind turbines², wave power plants, hydroelectric power plants and solar PV. The

¹ Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385).

² Under the open door procedure, the project developer takes the initiative to establish an offshore wind farm. The project developer must submit an unsolicited application for a license to carry out preliminary investigations in the given area. The application must, at a minimum, include a description of the project, the anticipated scope of the preliminary investigations, the size and number of turbines,

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measure will provide aid in form of a price premium determined in a competitive bidding process.

- (4) The notified scheme is the successor to the State aid scheme approved under SA.49918 (2018/N) - Multi-technology tender 2018-2019³, which expired on 31 December 2019 ('Past Scheme'). The joint auctions organised under the multi-technology scheme for onshore wind and PV⁴ in 2018 and 2019 resulted in low levels of aid⁵ caused by high electricity prices and favourable financing opportunities.
- (5) The Danish authorities explain that there is still uncertainty concerning the development of RES technologies in the future. Even though the cost of electricity produced from onshore wind turbines, open door offshore wind turbines and solar PV in Denmark has been declining over the past years there is great uncertainty about the development in the future market. The cost of electricity produced from onshore wind turbines in Denmark is still higher than the market price. As for solar PV, the technology requires State intervention in the form of subsidies in order to be financially viable under Danish climatic conditions. As for hydroelectric power plants, the Danish authorities explained that they only play a subordinate role in the Danish electricity mix, while wave power plants are still at a demonstration level. Thus, there is uncertainty about the development of RES in the future market, which therefore requires State intervention in the form of subsidies in order to be financially viable. If the electricity prices fall significantly, this might affect significantly the development of RES in Denmark. Furthermore, the Danish authorities note that the low levels of aid in the 2018 and 2019 tenders have not yet led to a substantial development of RES on market terms, which further justifies the need for a State intervention to support RES. The notified scheme aims at promoting competition within and between technologies, in order to ensure the lowest possible support levels and to ensure a green transition on market terms.

2.1. National legal basis

- (6) The scheme is based on the Act No. 738 of 30 May 2020 amending the Act on the Promotion of Renewable Energy, the Act on Electricity Supply, the Tax Assessment Act and the Personal Income Tax Act (*lov om ændring af lov om fremme af vedvarende energi, lov om elforsyning, ligningsloven og personskatteloven*) ('the Law'), which authorises the Danish Minister for Climate,

and the limits of the project's geographical siting. In an open-door project, the developer pays for the grid connection to land.

³ Commission decision of 17 August 2018 in the State aid case SA.49918 - Multi-technology tender 2018-2019, OJ C 406, 9.11.2018, p. 5.

⁴ Open door offshore wind turbines were also eligible to participate, but there were no projects participating in the tenders. The Danish authorities explained that no offshore wind projects have been established under the "open door" process within the last 10 years in Denmark, but that several "open door" offshore projects are being developed and would be eligible to participate in the multi-technology tender when having obtained the necessary permits.

⁵ For the 2018 auction, the weighted average premium of the successful bids was 0.0228 DKK/kWh (around 3.1 EUR/MWh), almost 6 times smaller than the bid cap set at 0.13 DKK/kWh. For the 2019 auction, the weighted average premium of the successful bids was 0.015428 DKK/kWh (around 2.1 EUR/MWh), a 30% reduction of the price premium compared to the 2018 auction.

Energy and Utilities to hold multi-technology tenders in the period 2020-2024⁶. The legal basis of the scheme consists of the Law together with the individual contracts with RES producers whose bids have been successful.

2.2. Objective

- (7) The objective of the scheme is to promote the development of renewable energy thus leading to an increased level of the environmental protection. The measure will help to achieving a national target of 55% of renewable energy by 2030 and to phasing out coal from electricity production in the same year. In a long term, the measure will further help to achieve a complete fossil fuel independency of Denmark by 2050. Furthermore, the scheme will contribute to achieving Denmark's target to reduce its carbon emissions by 70% in 2030 compared to 1990 levels and to reach carbon neutrality by 2050.
- (8) Moreover, the scheme will contribute to achieving the common EU target of at least 32% share of renewable energy sources on the energy consumption in 2030 set by the Directive (EU) 2018/2001 ('RED II')⁷. It will also back the achievement of the goals set by the Commission in the European Green Deal, in particular supply of clean, affordable and secure energy.⁸
- (9) The notified scheme was subject to a public consultation carried out by the Danish Energy Agency (DEA) from 13 July to 26 August 2020.
- (10) In 2018, the Danish authorities estimated the CO₂ reduction due to the technology neutral tenders scheduled for the period 2020-2024 to 1.9 million ton CO₂ equivalent in 2030⁹.

2.3. Beneficiaries

- (11) The contracts will be awarded based on a tendering procedure to the candidate(s) offering the lowest price. The tendering procedure will be open to all applicants who can meet the prescribed requirements for tenderers. The applicants may also choose to participate in the tenders with a fraction of a RES project. The beneficiaries can be all types of undertakings as well as natural persons regardless of nationality. Demonstration projects can participate in the tenders on the same

⁶ The wording of the law specifies 2020-2024 as the tendering period. In the end, no tender round was organised in 2020. The call for tenders which was originally scheduled for 2020 will take place in 2021, after the State aid approval of the notified scheme.

⁷ Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources, OJ L 328, 21.12.2018, p. 82.

⁸ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions from 11 December 2019.

⁹ Source: https://ens.dk/sites/ens.dk/files/Analyser/notat_om_effekter_af_energiaftalen.pdf.

The estimations were carried out in the context of the Energy Agreement of 29 June 2018. The partial effect of the technology neutral tenders in 2020-2024 (denoted "Teknologineutral VE-støtte") assumed approximately 215 MW (onshore wind equivalent) in each tender round. The impact assessment was based on an overall assessment of all the individual elements in the Energy Agreement and their interactions. The Danish authorities clarified that the partial effect of any individual element, such as the technology neutral tenders in 2020-2024, should therefore be interpreted with caution.

terms as other applicants. All installations must be located in Denmark, including on the Danish continental shelf, except for the Faroe Islands and Greenland.

- (12) The beneficiaries may add storage facilities to the RES installation at any point in time. However, any storage connected to the RES installation may only draw electricity from the RES installation and not from the grid¹⁰. Any storage that draws electricity from the grid is considered a “consumer installation” and is not permitted under the scheme.
- (13) The tendering procedure will be open to both new and, under specific conditions, also repowered installations. According to the Danish definition, a repowered wind turbine will be considered as a new installation when the entire wind turbine including tower, nacelle and rotor consist of parts which are newly manufactured. Foundations including grid connections from a previous project can be reused to establish a new installation.
- (14) For their part, solar PV installations will be considered as a new installation when the PV panels and inverters consist of parts which are newly manufactured. Mounting structures including grid connections from a previous project can be reused to establish a new installation.
- (15) Regarding a wave power plant, they will be considered a new installation when the entire installation consists of parts which are newly manufactured. Grid connections from a previous project can be reused to establish a new installation.
- (16) Regarding a hydroelectric power station, they will be considered a new installation when the entire installation consists of parts which are newly manufactured. Grid connections from a previous project can be reused to establish a new installation.
- (17) For a generic wind project, the costs for repowering existing onshore and offshore wind installations will exceed 50% of the costs of a new project. For solar PV, wave power plant and hydroelectric power projects, the costs for repowering those existing installations must be at least 60% of the investment in a new project.
- (18) The Danish authorities explain that the potential reduction of investment costs for a repowered installation will most likely correspond to a lower production compared to a new installation, since new and more productive technologies would need larger foundations or mounting structures (which for repowered installations will remain the same as the old ones). Therefore, the return of a repowered project will be very similar to a new project. The participant in the tenders will be able to assess which business model would be more profitable, repowering an existing installation or building a new one. For this reason, the Danish authorities contend that repowered installations compete with new installations on equal terms.

¹⁰ For instance, in the case of batteries, the inverter of the battery must be limited such that it does not draw electricity from the grid.

- (19) In respect of hydroelectric and wave power plants, the DEA will ensure that the provisions of Directive 2000/60/EC on a framework for Community action in the field of water policy¹¹ are respected.
- (20) The beneficiaries will have to comply with the following requirements:
- i. Aid will not be granted to firms in difficulty in line with point (16) of the Guidelines on State aid for environmental protection and energy 2014-2020¹², with its subsequent amendments and prolongation¹³ (“EEAG”);
 - ii. Beneficiaries need to repay any illegal aid received in the past;
 - iii. No premium will be paid for production during hours when the spot price¹⁴ is not positive;
 - iv. The beneficiaries must arrange for the sale of the production on the electricity market, face standard balancing responsibilities and cover the costs involved with both sale and balancing.
 - v. No aid is granted for balancing costs;
 - vi. Works should not have started before the date the aid is granted.

2.4. Form of aid

- (21) The aid will be granted pursuant to a contract-for-difference (‘CfD’) model, specifically a two-way CfD. When aid is paid out under the scheme it will be in the form of a contract-for-difference premium (‘CfD premium’). The CfD premium will be paid on top of the electricity price for the electricity sold on the market.
- (22) Specifically, the CfD premium will be the difference between the settlement price, which equals to the bidder’s winning bid as described in Section 2.5, and the annual reference price. The settlement price will not be indexed to inflation but set in Danish Krone (DKK) in current prices. Accordingly, tenderers will therefore have to factor in the risk of inflation in the bid price offered. The annual reference price is the simple unweighted average of the hourly spot market prices

¹¹ OJ L 327, 22.12.2000, p.1.

¹² OJ C 200, 28.6.2014, p. 1.

¹³ On 2 July 2020, the Commission adopted a communication prolonging and amending the EEAG. See Communication from the Commission C/2020/4355 concerning the prolongation and the amendments of the Guidelines on Regional State Aid for 2014-2020, Guidelines on State Aid to Promote Risk Finance Investments, Guidelines on State Aid for Environmental Protection and Energy 2014-2020, Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty, Communication on the Criteria for the Analysis of the Compatibility with the Internal Market of State Aid to Promote the Execution of Important Projects of Common European Interest, Communication from the Commission – Framework for State aid for research and development and innovation and Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance, OJ C 224, 8.7.2020, p. 2

¹⁴ The spot price for electricity means the price per hour per kWh on the spot market in the relevant electricity grid price zone in question (DK 1 or DK 2). In this context, the spot price is the day-ahead auction price on Nordpool.

in the preceding year for the respective bidding area corresponding to the location of the winning tenderer's installation (DK1 or DK 2)¹⁵. More specifically, the average spot electricity price in Denmark in the preceding calendar year is equal to the sum of the hourly spot market prices divided by the number of hours. The size of the CfD premium for each aid beneficiary will be fixed within each calendar year.

- (23) In line with the principles of a two-way CfD, a winning bidder will receive its CfD premium on top of the market price in the years when its settlement price exceeds the annual reference price. On the other hand, each winning bidder will pay the CfD premium to the State in the years when the annual reference price exceeds the bidder's settlement price.
- (24) There is a bid cap of DKK 0.25 per kWh, which will be included in the tender to ensure a low support level, meaning that no bid above the determined bid cap will be accepted. This bid cap of DKK 0.25 per kWh is set below the most recent forecasts of the future market price of electricity provided by Denmark (see Figure 1). Additionally, before future tender rounds, the bid cap might be set lower in response to updated price forecasts showing lower future prices. The upper limit on the bid cap of DKK 0.25 per kWh was determined by the Danish government in the climate agreement of 22 June 2020 (Klimaaf tale for energi og industri mv. 2020)¹⁶.

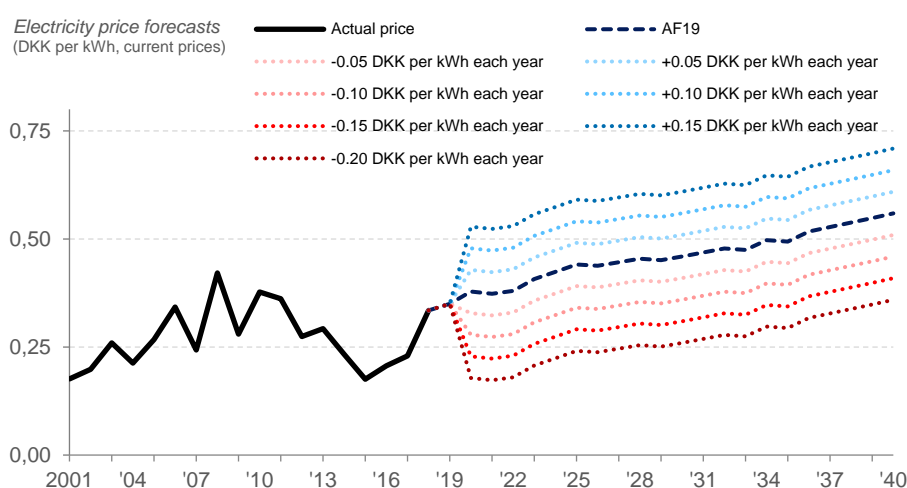


Figure 1. Forecast and future electricity price scenarios
 Source: "Analyseforudsætninger til Energinet 2019 (AF19)" by the DEA. Source: Notification.

- (25) For all tenders held in the period 2021-2024, the total aid paid to winning tenderers will not exceed DKK 3 billion (2020 prices) (around EUR 400 million). In addition to the overall budget limit of the measure, there is a cap on total

¹⁵ The Danish wholesale electricity market is divided into two bidding zones: West Denmark (DK 1) and East Denmark (DK 2). A bidding zone is an area with a single price, in which market players (for example, electricity generators, consumers, traders) can trade volumes without consideration for physical network constraints.

¹⁶ <https://fm.dk/media/18085/klimaaf tale-for-energi-og-industri-mv-2020.pdf>.

payments from the state to the winning tenderers in each tender round set at DKK 600 million (2020 prices) (around EUR 80 million). This payout cap covers the full 20-year duration of the CfD agreement. The payout cap applies for each tender round exclusively. However, two tender rounds planned for the same year may be combined in one tender round, which may increase the cap for the specific round correspondingly but have no effect on other terms, including the overall budget of the scheme. If the payout limit in one tender round is not reached, the remaining funds will not be reallocated to other tender rounds.

- (26) The overall payment of the CfD premiums will also be limited by the caps on payment from both the State and the beneficiaries that are project specific.
- (27) The State cap for a project-specific payout is DKK 2.8 million (2020 prices) (around EUR 380 000) per MW (onshore wind equivalent). This, in combination with the budget limit set for each tender round, i.e. DKK 600 million (see recital (25)), will mean that each tender round will have a de facto capacity limit of around 214 MW (onshore wind equivalent). If two tender rounds planned for the same year are combined (see recital (25)), the de facto capacity limit will increase correspondingly. The DEA may choose to change the project-specific payout cap, but under the constraint that the total payout limit does not exceed DKK 600 million (2020 prices) in any tender round, unless two tender rounds planned for the same year are combined (see recital (25)).
- (28) The beneficiary's project-specific payout cap to the state is DKK 5.6 million (2020 prices) (around EUR 750 000) per MW (onshore wind equivalent).

2.5. Competitive bidding process

- (29) The aid will be set via competitive bidding process. The auctions will be organised as multi-technology tenders including onshore wind turbines, open door offshore wind turbines, wave power plants, hydroelectric power plants and solar PV. The aid will be granted on the basis of the initial bid submitted by the bidder in line with the pay-as-bid principle (i.e. the contracted capacity is remunerated using the price bid). The Past Scheme was the first measure to introduce a competitive bidding process for several RES technologies in Denmark.
- (30) The auctions will take place in years 2021-2024. The Danish Minister for Climate, Energy and Utilities will determine how many tenders will be held from 2021 to 2024 and on which dates. There can be several auction rounds in a specific calendar year while no auction in another.
- (31) The tenderers must state in their bids a price in DKK per kWh for the first 20 years from the date the installation is connected to the electricity grid¹⁷, including a specification of the amount of MW that the tenderer wants to install. A tenderer can submit independent bids for different installations and technologies. However, such bids cannot be conditional on the award of contracts for the other installation(s). There is no upper limit on the number of installations included in

¹⁷ In accordance with section 5(4) of the Danish Promotion Renewable Energy Act, the date of grid connection is defined as the date at which the installation supplies electricity to the Danish collective electricity supply grid for the first time. This date is subject to subsequent registration.

each bid, nor on the number of MW included in each bid (except for the overall de facto capacity limit for each tender, see recital (27)). There is no maximum size of the bid.

- (32) The total awarded capacity in each tender round is given by the capacity limit which was estimated to around 214 MW (onshore wind equivalent) unless two tender rounds planned for the same year are combined (see recital (27)). If there is not enough capacity in the bids in a given tender round to reach that capacity limit, then the Danish authorities will apply a 90% threshold. When the 90% threshold is applied, the bids with the lowest bid prices covering 90% of the offered capacity will be awarded a CfD contract. This means that 10% of the total offered capacity with the highest bids will not be awarded a CfD contract under the respective tender round. The total offered capacity and the capacity limit is defined in terms of onshore wind equivalent units, which are calculated using a pre-defined full load hours for each technology¹⁸. The 90% threshold will also apply if two tender rounds planned for the same year are combined.
- (33) The tenderers are responsible for finding locations for the installations and have to obtain the relevant approvals, including an Environmental Impact Assessment report (where required), before participating in the tender. When relevant, such approvals will include an assessment of whether the installations are likely to have a significant effect on a Natura 2000 site, according to the provisions of Article 6(3) of the Habitats Directive¹⁹.
- (34) A successful bidder is subject to a contractual penalty if it fails to construct the installation(s) or does not connect it (them) to the grid. The bidder must provide security for payment of the penalty through a guarantee, which must be provided for each contract. In addition, the bidder is under obligation to connect the onshore wind turbine, wave power plants, hydroelectric power plants and solar PV installation(s) to the electricity grid no later than 2 years after the contract is signed. For open door offshore wind turbines, the contractor shall connect its installation(s) to the electricity grid no later than 4 years after the contract is signed. The DEA can grant exemptions from the 2 or 4 year limit in line with the specific provisions of the tender conditions.

Technologies not participating in the tenders

- (35) Biomass, biogas and offshore wind projects will be excluded from participating in the tenders. The Danish authorities have justified this restriction with the following reasons.
- (36) For biomass and biogas, the Danish authorities explained that biomass has become a limited resource and Denmark has already become heavily dependent

¹⁸ These pre-defined full load hours (FLH) are expected to be 3,400 FLH for onshore wind turbines, 4,500 FLH for offshore wind turbines, 2,500 FLH for wave power plants, 2,500 FLH for hydroelectric plants, and 1,075 FLH for solar PV (with respect to DC-capacity).

¹⁹ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, OJ L 206, 22.7.1992, p. 7.

on it.²⁰ There are therefore ongoing political discussions about the future role for bioenergy in the Danish energy mix. For this reason, any decision concerning aid for the promotion of new biomass installations for heat and power as well as new biogas installations has been put on hold, as Denmark does not want to increase the number of biomass and biogas installations in its energy mix. With the climate agreement of 22 June 2020, the majority of the political parties has agreed to analyse the long-term consequences of limiting the use of biomass.

- (37) For large scale offshore wind installations, the Danish authorities explained that according to the Danish political agreement from June 2018 and the climate agreement from June 2020 three large scale offshore wind farms, each with a minimum size of 800 MW, should be established by 2030. They will be selected based on site-specific tenders for the production of electricity on the designated sites selected by the Danish authorities.²¹ The Commission has already approved the support for the Thor offshore wind farm on 1 March 2021, which will be granted through competitive tender²². Furthermore, according to the Danish authorities, it is not possible to establish similar large scale projects on land due to limited land area in Denmark. Large scale offshore wind projects will therefore be subject to a separate tender process.
- (38) Denmark confirmed that other technologies are at early stages of development and lack the maturity to compete in technology neutral tenders.

2.6. Cumulation

- (39) The Danish authorities have confirmed that the aid granted under the notified measure cannot be cumulated with any other aid.
- (40) The Danish authorities explained that locally based citizen groups can apply for a guarantee from the Guarantee Fund when raising loans for activities in the early project development stage such as screening of potential sites, preparations of documents for relevant approvals, etc. It is a measure under the *de minimis* rule and therefore deemed not to constitute aid, where the guarantee can be issued to a maximum of DKK 500,000 per project²³ and it is aimed at a different stage of the project, where its completion is uncertain.

2.7. Duration of the scheme

- (41) The scheme will be put into effect following the Commission's approval and the aid under the scheme can be granted until 31 December 2024.

²⁰ Biomass accounts for most of the renewable energy produced in Denmark and it has increasingly replaced coal-fired installations in the electricity and heating sector.

²¹ Large scale offshore wind projects have to be distinguished from open door offshore wind turbines included in the multi technology tenders. In case of open door turbines, the developer will pre-develop the site on its own behalf and the permits to establish the wind farms will be obtained before submitting a bid (i.e. not after the bid as is the case for large scale offshore wind projects).

²² Commission Decision of 1 March 2021, SA.57858 (2021/N) - Thor Offshore Wind Farm in Denmark, OJ C 94, 19.3.2021, p. 1–9.

²³ See Article 4(6) of the Commission Regulation (EC) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid, OJ L 352, 24.12.2013, p. 1.

- (42) The premium will be paid for a maximum of 20 years from the time of the connection of the RES installation to the electricity grid, provided that all conditions for receiving the aid are fulfilled. The lifetime of a wind turbine, wave power plant, hydroelectric plant and solar PV installation is expected to be 27 years, 20 years, more than 30 years and 35 years respectively, while ordinary Danish accounting rules allow for depreciation over the entire lifetime of an installation.

2.8. Financing and budget

- (43) The maximum estimated budget²⁴ of the scheme is DKK 3 billion (based on 2020 prices) (around EUR 400 million) and it will be entirely financed from the State budget.

2.9. Transparency

- (44) The DEA will ensure compliance with the transparency requirements laid down in points 104 to 106 of the EEAG. The relevant data of the notified measure will be published on a national website²⁵ that will link to the Commission's transparency register.

2.10. Firms in difficulty or subject to an outstanding recovery order

- (45) The Danish authorities have confirmed that no aid can be granted to undertakings in difficulty or to undertakings subject to an outstanding recovery order following a previous Commission decision declaring aid illegal and incompatible with the internal market. The Danish authorities have also confirmed that undertakings which were not in difficulty on 31 December 2019 but became undertakings in difficulty in the period from 1 January 2020 to 30 June 2021, can participate in the call for tenders²⁶.
- (46) To ensure that no aid will be granted to a firm in difficulty, the tender conditions provide that the participants in the tenders have to declare that they are not an undertaking in difficulty as defined in the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty²⁷. In addition, the DEA will check a sample corresponding to 5 to 10% of the declarations given by beneficiaries.

3. ASSESSMENT

3.1. Presence of State Aid

- (47) Under Article 107(1) TFEU, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort

²⁴ The actual size of the budget will depend on the outcome of the bidding process as well as on the development of the market price of electricity.

²⁵ <https://ens.dk/service/lovstof>.

²⁶ On 2 July 2020, the Commission adopted a communication prolonging and amending the EEAG. In point (16) of the amended EEAG, the following sentence has been added: *'These Guidelines shall, however, apply to undertakings which were not in difficulty on 31 December 2019 but became undertakings in difficulty in the period from 1 January 2020 to 30 June 2021.'*

²⁷ OJ C 249, 31.7.2014, p. 1.

competition by favouring certain undertakings or the production of certain goods, in so far as it affects trade between Member States, is incompatible with the internal market.

- (48) In determining whether a measure constitutes State aid within the meaning of Article 107(1) of the Treaty, the Commission has to apply the following criteria: (i) the measure must confer an advantage on certain undertakings or certain sectors (selective advantage), (ii) it must be imputable to the State and involve State resources, (iii) it must distort or threaten to distort competition and (iv) it must be liable to affect trade between Member States.

3.1.1. Existence of State resources and imputability

- (49) The support for renewable electricity is imputable to the State, as the support has been established by Act No. 738 of 30 May 2020 amending the Act on the Promotion of Renewable Energy, the Act on Electricity Supply, the Tax Assessment Act and the Personal Income Tax Act and implemented by the Ministry of Energy, Utilities and Climate and the DEA.
- (50) The support will be funded entirely from the State budget. The notified measure is therefore granted through State resources.

3.1.2. Selective advantage in favour of certain undertakings or certain sectors

- (51) An advantage, within the meaning of Article 107(1) TFEU, is any economic benefit, which an undertaking would not have obtained under normal market conditions, that is to say in the absence of State intervention.²⁸ Article 107(1) TFEU also requires that a measure, in order to constitute State aid, is selective in the sense that it favours “*certain undertakings or the production of certain goods*”.
- (52) Under the notified scheme, beneficiaries receive an advantage because they obtain additional support in the form of a premium on top of the market price. Those payments guarantee producers of electricity from the supported RES technologies revenues higher than what they would obtain on the market.
- (53) Furthermore, the measure is selective because it favours only specific electricity generators and the aid is not accessible to other electricity producers that are in comparable legal and factual situation in that they produce electricity and sell it on the market. Furthermore, the notified measure favours certain types of investments, which reduce greenhouse gas (GHG) emissions and are more common in specific sectors, such as the energy sector. In that respect, according to the Danish authorities estimations from 2018, the technology neutral tenders scheduled under the scheme will lead to a CO₂ reduction of 1.9 million ton CO₂ equivalent in 2030 (see recital (10)).

²⁸ Judgments of the Court of Justice of 11 July 1996, *SFEI and Others*, C-39/94, EU:C:1996:285, paragraph 60; and of 29 April 1999, *Spain v Commission*, C-342/96, EU:C:1999:210, paragraph 41.

- (54) It follows that the support under the measure confers therefore a selective advantage within the meaning of Article 107(1) TFEU.

3.1.3. *Threat of distortion of competition and trade*

- (55) In accordance with settled case law²⁹, for a measure to impact competition and trade it is sufficient that the recipient of the aid competes with other undertakings on markets open to competition.
- (56) The electricity market has been liberalised and electricity producers engage in trade between Member States. The electricity generated by the beneficiaries of the measure is generally sold on the spot market where it enters in competition with electricity from different sources (such as electricity from other RES, conventional and nuclear sources).
- (57) Therefore, the advantage granted to the producers of electricity from wind, wave, hydro and solar PV is likely to distort competition and affect trade between Member States.

3.1.4. *Conclusion on the existence of State aid*

- (58) On the basis of the above-mentioned elements, the Commission considers that the measure constitutes State aid within the meaning of Article 107(1) TFEU.

3.2. Lawfulness of the aid

- (59) The measure was notified to the Commission by the Danish authorities on 4 March 2021. Although the text of the Law mentions that the tendering period runs from 2020 until 2024, the Commission notes that no tendering rounds have taken place as of the date of the adoption of this decision (see recital (6)). Denmark accordingly has fulfilled the notification and standstill obligation of Article 108(3) TFEU.

3.3. Compatibility of the aid with the internal market

- (60) Article 107(3)(c) TFEU provides that the Commission may declare compatible “*aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest*”. Therefore, compatible aid under that provision of the Treaty must contribute to the development of certain economic activity. Furthermore, the aid should not distort competition in a way contrary to the common interest.
- (61) Moreover, the EEAG set out specific compatibility conditions for aid for energy from renewable sources.
- (62) The Commission notes that the notified scheme aims at promoting the generation of electricity from specific RES technologies. Consequently, the Commission has assessed the notified aid measure on the basis of the general compatibility

²⁹ Judgment of 30 April 1998, *Het Vlaamse Gewest v Commission*, T-214/95, EU:T:1998:77.

provisions of the EEAG with its subsequent amendments and prolongation³⁰ (set out in its section 3.2. of the EEAG) and the specific compatibility criteria for operating aid granted for electricity from RES (sections 3.3.1 and 3.3.2.1. of the EEAG).

3.3.1. Contribution to the development of an economic activity

- (63) Under Article 107(3)(c) TFEU, the measure must contribute to the development of certain economic activity³¹.
- (64) The notified aid scheme supports the development of the economic activity linked to the deployment of the RES technologies, namely onshore wind turbines, open door offshore wind turbines, wave power plants, hydroelectric power plants and solar PV.
- (65) In view of the above, the Commission considers that the notified measure facilitates the development of certain economic activities, as required by Article 107(3)(c) TFEU.

3.3.2. Compliance with other provisions of EU law

- (66) State aid which contravenes provisions or general principles of EU law cannot be declared compatible³².
- (67) As explained in recital (33), Denmark has further confirmed that the scheme will only be open to projects which have obtained the relevant environmental approvals, including an Environmental Impact Assessment report (where required).
- (68) In light of the above, the Commission considers that the notified aid measure does not infringe relevant EU law.

3.3.3. Need for State intervention

- (69) According to subsection 3.2.2 of the EEAG, the Member State needs to demonstrate that there is a need for the State intervention and in particular that the aid is necessary to remedy a market failure that otherwise would remain unaddressed. In the case of the production of electricity from renewable sources, the Commission presumes that a residual market failure remains, which can be addressed through aid for renewable energy, for the reasons set out in point 115 of the EEAG.
- (70) Based on the information submitted by the Danish authorities in recital (5), the Commission notes that onshore wind, open-door offshore wind, wave power plants, hydroelectric power plants and solar PV are technologies that still require State intervention in the form of subsidies to be financially viable in Denmark.

³⁰ OJ C 290, 10.08.2016, p.11. and OJ C 224, 8.7.2020, p. 2.

³¹ Judgment of 22 September 2020, *Austria v Commission*, C-594/18 P) EU:C:2020:742 - Planned aid for Hinkley Point C nuclear power station (United Kingdom), paras 20 and 24.

³² Judgment of 22 September 2020, *Austria v Commission*, C-594/18 P, EU:C:2020:742, paragraph 44.

The aid will contribute towards the achieving of the goal of the green transition based on market terms.

- (71) As explained in recital (5), the auctions organised under the Past Scheme for wind and PV in 2018 and 2019 resulted in low levels of aid caused by high electricity prices and favourable financing opportunities. However, the Commission notes that there is still a great uncertainty concerning the development of these elements in the future. In addition, despite the low levels of aid, the favourable market conditions have not yet led to any substantial development in RES energy on market terms, which, according to the Danish authorities, substantiates the need for State intervention.
- (72) As regards the other two technologies included under the auction scheme, hydroelectric power plants only play a subordinate role in Denmark, while wave power plants are still on a demonstration level. Thus, the Commission takes note of the information submitted by the Danish authorities, which provide that there is still uncertainty about their future development under market conditions and both technologies therefore require State intervention in the form of subsidies in order to be financially viable.
- (73) The Commission notes that electricity production from renewable energy sources is still a business prone to risks, in particular the risk of the fluctuating electricity price over the medium to long term. As explained by the Danish authorities in recital (5), the development of RES in Denmark might be significantly affected if electricity prices fall drastically in the future.
- (74) Therefore, based on the assessment carried out by the Danish authorities, it is unlikely that, absent the aid, the development of electricity production from renewable energy sources and thus the development of those participating RES technologies would occur, or would occur to the same extent.
- (75) Based on the information provided by Danish authorities, the Commission concludes that the measure is a necessary instrument to contribute to the development of certain economic activities.

3.3.4. Appropriateness

- (76) According to point 40 of the EEAG, the proposed measure must be an appropriate instrument to address the policy objective concerned. According to point 116 of the EEAG, the Commission presumes the appropriateness and limited distortive effects of the aid provided that all other compatibility conditions are met. As will be shown in the Sections below, the compatibility conditions are met. Therefore, the Commission considers the aid to be appropriate.

3.3.5. Incentive effect

- (77) An aid measure has an incentive effect if it incentivises the beneficiary to change its behaviour towards the development of a certain economic activity pursued by the aid measure and if the change in behaviour would not occur without the aid.³³.

³³ See in that sense points 49 and 144 of the EEAG, as well as the Hinkley judgment in footnote 31.

Furthermore, point 50 of the EEAG stipulates that aid does not present an incentive effect in all cases where works on the project started prior to the aid application.

- (78) As stated in recital (70) above, the participating RES technologies are still not entirely cost-competitive. Electricity generated by these technologies cannot compete on market terms with electricity generated from existing conventional electricity production in Denmark due to the difference between the investment costs and the net present value of the expected operating profits of the investment without aid. Without the aid, the Commission notes that RES installations would not be financially viable.
- (79) As mentioned in recital (20), Denmark confirmed, in line with point 50 of the EEAG, that beneficiaries will have to state that works on the projects have not begun before the granting of aid.
- (80) The Commission therefore concludes that the aid has an incentive effect, as the measures induce the beneficiaries to change their behaviour and invest in RES installations, which they would not undertake without the aid.

3.3.6. *Proportionality*

- (81) Point (27)(e) of the EEAG stipulates that for aid to be proportionate it should be limited to the minimum amount necessary to achieve the objective of development of certain economic activities.
- (82) According to point 69 of the EEAG, environmental aid is considered to be proportionate, if the aid amount per beneficiary is limited to the minimum needed to induce the additional investments or activity by the beneficiary.
- (83) Finally, point 87 of the EEAG provides that in case of operating aid granted by way of a competitive bidding process, the proportionality of individual aid is presumed to be met if the general conditions are fulfilled. In addition, the provisions of the point 124 of the EEAG need to be fulfilled.
- (84) The proportionality of the aid under this measure is ensured by granting the aid through a tendering procedure on the basis of clear, transparent and non-discriminatory criteria in line with point 80 of the EEAG.
- (85) The tender procedure ensures the aid granted to the beneficiaries to be limited to the minimum needed to achieve the operation of the installations, since the contracts are awarded on the basis of a sole award criterion, namely the lowest price.
- (86) The Commission notes that the Danish authorities have confirmed that the tendering procedure will be open to anyone who can meet the prescribed requirements for participation (see recital (11)). Denmark expects that a sufficiently large number of tenderers will come forward to ensure an adequate level of competition in the auctions.

- (87) On the other hand, Denmark will limit the scope of participating RES technologies to onshore wind turbines, open door offshore wind turbines, wave power plants, hydroelectric power plants and solar PV.
- (88) The Commission considers the exclusion of biogas, biomass, large offshore wind installations and other RES technologies from the multi-technology tenders to be justified in line with point (126), fifth sentence, letter (b) of the EEAG. First, the Commission notes that for biomass and biogas, the Danish authorities explained in recital (36) that biomass has become a limited resource and there are therefore ongoing political discussions about the future role for bioenergy in the Danish energy mix. Denmark does not therefore currently want to increase the number of biomass and biogas installations in its energy mix by supporting the construction of new installations.
- (89) Second, for large scale offshore wind installations, the Danish authorities explained in recital (37) that according to the Danish political agreement from June 2018 and the climate agreement from June 2020 three large scale offshore wind farms should be established by 2030. The Commission notes that in view of this specific design feature of the selection procedure, Denmark will not include large scale offshore wind installations in the notified scheme. Furthermore, according to the Danish authorities, it is not possible to establish similar large scale projects on land due to limited land area in Denmark.
- (90) Finally, Denmark confirmed in recital (38) that other RES technologies either do not have the potential for their development in Denmark or are at early stages of development and lack the maturity to compete in technology neutral tenders.
- (91) In addition, the Danish authorities will allow repowered installations to participate in the tenders. The objective of their inclusion in the tenders is to encompass the situation where older installations have reached the technical lifetime and therefore block relevant sites. By making it possible to replace older installations with new ones (as defined in recitals (13)-(16)), the Danish authorities expect that the sites will be used in an optimal way. In that regard, the Danish authorities have confirmed that for a generic wind project, the costs for repowering existing onshore and offshore wind installations will exceed 50% of the costs of a new project (see recital (17)), while for solar PV, wave power plant and hydroelectric power projects, the costs for repowering those existing installations must be at least 60% of the investment in a new project (see recital (17)). As explained by the Danish authorities in recital (18), the potential reduction of investment costs for a repowered installation will most likely correspond to a lower electricity production compared to a new installation, since new and more productive technologies would need larger foundations or mounting structures (which for repowered installations will remain the same as the old ones). Consequently, the return of a repowered installation will be very similar to a new installation. The participant in the tenders will be able to assess which business model would be more profitable, repowering an existing installation or building a new one. Therefore, the Commission concludes that

repowered installations will compete on an equal footing with new installations since the return on both installations will be comparable³⁴.

- (92) In order to prevent the aid beneficiaries from being overcompensated, the Danish tender conditions limit the duration of aid to 20 years following the connection to the grid. The Commission notes that the lifetime of a wind turbine, wave power plants, hydroelectric plants and solar PV installation is expected to be 27 years, 20 years, more than 30 years and 35 years respectively and that the ordinary Danish accounting rules allow for depreciation over the entire lifetime of an installation, as indicated in recital (42). The Commission therefore concludes that the notified aid scheme complies with point 129 of the EEAG.
- (93) As described in recital (21), the aid will be granted in the form of a CfD premium which will work as a two-way contract. This means that the aid beneficiaries will pay the CfD premium to the State in the period when the annual reference price exceeds their settlement price, i.e. their offered bid price. In addition, as already indicated in recital (24), a bid cap of DKK 0.25 per kWh will be included in each tender round to limit the maximum amount of aid. Finally, the overall payments of the CfD premiums will be limited by the payout caps described in recitals (25) and (27). The aid beneficiaries will thus receive aid only until the payout cap applies.
- (94) In addition, according to point 124 (a) of the EEAG aid must be granted as a premium in addition to the market price whereby the generators sell their electricity directly to the market.
- (95) As described in recital (21), the aid will be granted in the form of a market premium. Moreover, as provided in recital (20), the beneficiaries of the aid are responsible for selling their electricity production on the electricity market. The Commission therefore concludes that the notified aid scheme complies with point 124 (a) of the EEAG.
- (96) As described in recital (20), the beneficiaries eligible for premiums are subject to standard balancing responsibilities and no aid is granted for covering balancing costs. The Commission therefore concludes that the notified aid scheme complies with point 124 (b) of the EEAG.
- (97) As provided in recital (20), Denmark has confirmed that no premium will be paid for any production during hours when the spot price is not positive. The Commission therefore concludes that the notified aid scheme complies with point 124 (c) of the EEAG.
- (98) The Commission notes that no other aid will be granted in addition to the premium. As indicated in recital (39), the Danish authorities further confirmed that the operating aid granted under this measure cannot be cumulated with any other aid. The financial support available to groups of local citizens under the

³⁴ See recital (79) of the Commission decision of 17 August 2018 in the State aid case SA.49918 - Multi-technology tender 2018-2019, OJ C 406, 9.11.2018, p. 5. See also Commission decision of 11 July 2017 in State aid case SA.44076 – Hungary – Aid for electricity production from renewable energy sources (METAR), OJ C 198, 8.7.2018.

Guarantee Fund (see recital (40)) qualifies for *de minimis* and it is aimed at a different stage of a potential project, the completion of which is uncertain.

- (99) In light of the above, the Commission considers the aid to be proportionate and in line with the relevant EEAG sections.

3.3.7. *Distortion of competition and balancing test*

- (100) The negative effects of the measure on competition and trade must be sufficiently limited, so that the overall balance of the measure is positive. The Court has clarified that in order to assess whether a measure adversely affects trading conditions to an extent contrary to the common interest, the Commission must weigh up the positive effect of the planned aid for the development of the activities that aid is intended to support and the negative effects that the aid may have on the internal market³⁵.
- (101) On the positive side of the balance, the Commission notes that the measure will facilitate the development of RES in Denmark from a variety of technologies. Moreover, the aid should induce positive indirect effects in terms of environmental gains.
- (102) In this regard, the Commission notes that promotion of the development of renewable energy is one of the aims of the Union's policy on energy pursuant to Article 194 TFEU. Moreover, point 30 of the EEAG recognises that an increased level of environmental protection may be attained through a shift to a low carbon economy with a significant share of variable energy from RES.
- (103) Therefore, the Commission welcomes the fact that, as explained in recitals (7) and (8), the notified measure supports the new EU³⁶ and national targets (climate neutrality by 2050 and increased use of renewable energy sources). It is consistent with the Danish National Energy and Climate Plan (NECP)³⁷ aiming at increasing the share of renewables in the national energy mix at low cost for the electricity consumer.
- (104) The Commission notes that the notified measure will contribute to meeting Denmark's national target of 55% of its energy consumption from RES by 2030. In addition, the measure will contribute to achieving the EU target of at least 32% share of RES on the energy consumption in 2030 set by the RED II. Moreover, the measure will contribute to the Denmark's long-term goal to reduce its greenhouse gases by 70% by 2030 (relative to 1990 level) and to reach net zero

³⁵ C-594/18 P Austria v Commission EU:C:2020:742, para 101.

³⁶ Directive (EU) 2018/2001 establishes a binding renewable energy target for the EU for 2030 of 32% (RED II) and the European Council of 11 December 2020 endorsed a binding EU target of a net domestic reduction of at least 55% in greenhouse gas emissions by 2030 compared to 1990, <https://www.consilium.europa.eu/media/47296/1011-12-20-euco-conclusions-en.pdf>.

³⁷ Available online at: https://ec.europa.eu/energy/sites/ener/files/documents/dk_final_necp_main_en.pdf.

emission by 2050 at the latest. The Commission notes that the notified measure is in line with the Green Deal Communication³⁸.

- (105) As explained in recital (4), the auctions organised under the multi-technology scheme for wind and PV in 2018 and 2019 resulted in low levels of aid caused by high electricity prices and favourable financing opportunities. However, the Commission notes that there is still uncertainty concerning the development of RES technologies in the future. In addition, despite the low levels of aid, the favourable market conditions have not led to a substantial development of RES on market terms.
- (106) On the negative side of the balance, the Commission notes that the measure provides an advantage to selected beneficiaries, to the exclusion of other electricity producers. However, the Commission notes that the aid will be allocated through a competitive bidding process, which will limit the risk of overcompensation. In addition, as mentioned in recital (27), the overall payments of the CfD premiums will be limited by a cap on payment from the State. Therefore, the measure is designed to limit distortions of competition.
- (107) Point 116 of the EEAG establishes a presumption that aid to energy from renewable sources have limited distortive effects provided all other compatibility conditions are met. As it is explained under sections 3.3.1, 3.3.2, 3.3.3, 3.3.4, 3.3.5, 3.3.6 above and section 3.3.8 below, these conditions are met. Therefore, the design of the notified measure ensures that distortions of competition and trade are kept to the minimum.
- (108) Finally, the Commission notes that Denmark has undertaken to ensure that the provisions of Directive 2000/60/EC on a framework for Community action in the field of water policy are respected, as provided in recital (19). Therefore, the notified measure complies with point 117 of the EEAG.
- (109) In light of the above, the Commission concludes that the notified measure has significant positive effects in terms of facilitating an economic activity and of environmental protection while not leading to undue distortions of competition and trade. It follows that the positive effects of the aid outweigh its negative effects on competition and trade. Therefore, the aid at issue facilitates the development of certain economic activities while not adversely affecting trading conditions to an extent contrary to the common interest, as required by Article 107(3)(c) TFEU.

3.3.8. Transparency of the aid and firms in difficulty or subject to an outstanding recovery order

- (110) According to point 104 of the EEAG, Member States have the obligation to ensure transparency of the aid granted by publishing certain information on a comprehensive State aid website. As explained above in recital (44), the

³⁸ Section 2.1.1. Increasing the EU's climate ambition for 2030 and 2050 of the Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: The European Green Deal, COM/2019/640 final.

Commission takes note that the Danish authorities comply with this transparency requirement by publishing the relevant data for the notified measure on a national website³⁹ that will link to the Commission's transparency register.

- (111) As explained in section 2.10 above, the Commission notes that no aid will be granted to undertakings in difficulty and all firms that intend to participate in the tender will have to provide a declaration that they are not a “firm in difficulty”. The Commission therefore considers that the notified measure is in line with point (16) of the EEAG. The Commission notes that the Danish authorities allow undertakings, which were not in difficulty on 31 December 2019 but became undertakings in difficulty in the period from 1 January 2020 to 30 June 2021 to participate in the tender, as provided in recital (45). Besides, the Danish authorities confirm that no aid can be granted to undertakings subject to an outstanding recovery order following a previous Commission decision declaring aid illegal and incompatible with the internal market. The Commission therefore considers that the notified measure is in line with point (17) of the EEAG.

3.3.9. Conclusion with regard to the compatibility of the measure

- (112) In light of the above, the Commission considers that the notified scheme promoting the production of electricity from RES pursues an objective of common interest in a necessary and proportionate way without unduly affecting competition and trade, and that the aid is therefore compatible with the internal market on the basis of the EEAG.

4. AUTHENTIC LANGUAGE

- (113) As mentioned in recital (2), Denmark has accepted to have the decision adopted and notified in English. The authentic language will therefore be English.

5. CONCLUSION

The Commission has accordingly decided not to raise objections to the aid granted in State Aid SA. 56831 (2021/N) - Multi-technology RES tenders 2021-2024 on the grounds that the aid 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>.

³⁹ <https://ens.dk/service/lovstof>.

Your request should be sent electronically to the following address:

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Directorate-General Competition
State Aid Greffe
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully
For the Commission

Margrethe VESTAGER
Executive Vice-President