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**Subject: State Aid SA.102294 (2022/N) – Croatia
Reduction for EIUs on the amount of levy supporting renewable
energy sources**

Excellency,

1. PROCEDURE

- (1) On 17 October 2022, following pre-notification contacts, the Croatian authorities notified to the Commission, in accordance with Article 108(3) of the Treaty on the Functioning of the European Union (“TFEU”), the above-mentioned measure. The measure consists of a support scheme reducing for energy intensive users (“EIUs”) the levy paid on electricity consumption to contribute to the production of renewable energy sources and high-efficiency cogeneration (“RES levy”).
- (2) The Commission sent to the Croatian authorities requests for information on 16 November 2022. The Croatian authorities submitted their replies on 24 November 2022.
- (3) On 28 November 2022, Croatia exceptionally agreed to waive its right under Article 342 of the TFEU in conjunction with Article 3 of EC Regulation No 1/1958 to have the decision adopted and notified in Croatian and agreed that the decision be adopted and notified in English.

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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

- (4) The notified measure (“the measure”) concerns a reduction for EIUs in the payment of the levy aimed at financing electricity production from renewable energy sources (“RES”). The measure replaces a previous measure granting reductions in the amount of the RES levy for EIUs (“the previous measure”), which the Commission approved under the Guidelines on State aid for environmental protection and energy 2014-2020¹ (“EEAG”) until 31 December 2021².
- (5) This RES levy is paid by all final electricity consumers, including the EIUs, as fixed component for each kWh of electricity sold³. The RES levy currently amounts to HRK 0.105/ kWh⁴ for all final electricity consumers.
- (6) The RES levy 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 energije d.o.o. (“HROTE”)⁵. HROTE is the granting authority for RES support, entirely controlled by the State 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 levies for the RES financing.
- (7) The amount of the RES levy is determined by a decision of the Croatian government covering a period of one year starting on 31 October of each year. The RES levy is established taking into account HROTE’s revenue and expenditure plan for the coming year, including projections for at least three years regarding RES development.

2.2. Objective of the measure

- (8) According to the Croatian authorities, the measure contributes to the development of the economic activities carried out by EIUs by mitigating the risk of EIUs moving all or part of their activities outside the EU where environmental

¹ OJ C 200, 28.6.2014, p. 1–55.

² SA.54887 (2020/N) – Croatia – Reduction in the amount of charge for renewable energy sources.

³ Act No 138/21 on the Renewable Energy Sources and High-Efficiency Cogeneration (“RES Act”). According to Croatian authorities, Croatia does not provide financial support to cogeneration installations. Aid to cogeneration RES plants is limited to their production of electricity from renewable sources.

⁴ Decision of 14 May 2020 of the Government of the Republic of Croatia amending the Decision on compensation for renewable energy sources and high-efficiency cogeneration, "Official Gazette" number NN 57/2020.

⁵ On the basis of Article 43 of RES Act, dedicated funds for the payment of incentives are collected in a separate account of HROTE which includes a dedicated levy for the promotion of the production of electricity from RES.

standards are absent or less ambitious (“relocation risk”), as the result of the increasing costs from the full payment of the RES levy⁶.

- (9) The Croatian authorities note that EIUs are undertakings operating in economic sectors which are exposed to international trade and that rely heavily on electricity to create value. Croatian authorities explained that, for these undertakings, paying the full amount of the RES levy increases the risk of moving their activities in locations outside of the EU where the environmental standards are less ambitious and there are no equivalent costs for EIUs.
- (10) According to Croatian authorities, in 2021 the full RES levy was estimated to account for 13.7 % of the total electricity bill of EIUs⁷. On average, the Croatian authorities estimate that the implementation of the measure is expected to reduce the EIUs’ current cost of electricity by approximately 6 %, as the significant increase in electricity prices faced by EIUs reduce the weight of the RES levy over the total costs of procuring electricity.

2.3. National legal basis

- (11) The legal basis for the measure (the “national legal basis”) is Article 50(7) of the Act No 138/21 on the Renewable Energy Sources and High-Efficiency Cogeneration (“RES Act”) together with the draft Regulation on the Criteria for the Application of the Reduced Levy for Renewable Energy Sources and High-Efficiency Cogeneration⁸ (“draft Regulation”), which replaces the legal basis of the previous measure⁹.
- (12) Croatian authorities confirm that aid will only be granted under the measure after the Commission has adopted a decision authorising the measure.

2.4. Reduction in the financing of the RES support system

- (13) Croatia intends to grant different reduction rates on the RES levy depending on the electro-intensity of individual beneficiaries¹⁰. This is due to the fact that EIUs with a higher energy-intensity are affected to a greater degree by the RES levy, which may in turn have a greater impact on their relocation risk.
- (14) The electro-intensity of individual companies is determined by dividing their total annual electricity costs by their gross value added (“GVA”)¹¹. Companies’ electricity costs are their annual electricity costs averaged over the three years

⁶ See Article 1(2) of the draft Regulation on the Criteria for the Application of a Reduced Levy for Renewable Energy Sources and High-Efficiency Cogeneration.

⁷ See the Annual Report of the Croatian Energy Regulatory Agency for 2021, available here: https://www.sabor.hr/sites/default/files/uploads/sabor/2022-06-30/135428/IZVJ_HERA_2021.pdf.

⁸ UREDBU O KRITERIJIMA ZA PLAĆANJE UMANJENE NAKNADE ZA OBNOVLJIVE IZVORE ENERGIJE I VISOKOUČINKOVITU KOGENERACIJU, available at https://narodne-novine.nn.hr/clanci/sluzbeni/2021_12_138_2272.html

⁹ Regulation on the criteria for the application of the reduced levy for renewable energy sources and high-efficiency cogeneration, Official Gazette 57/2020.

¹⁰ See Article 5 of the draft Regulation.

¹¹ *Ibid.*, Article 11.

prior to the application¹². GVA is calculated by deducting material costs and indirect taxes from companies' operating income over the last three years¹³.

- (15) Therefore, according to the Croatian authorities, the application of different reduction rates results from a detailed analysis of companies' incentives. The mechanism provides the following reduction rates:

Electro-intensity band	Electro-intensity ranges	RES levy reduction in %
R1	from 5 % to 10 %	40 %
R2	more than 10 % to 20 %	60 %
R3	more than 20 %	75 %

- (16) Moreover, the draft Regulation provides that the reduction from the RES levy may not result in a levy lower than 3.76725 HRK/MWh (equivalent of 0.5 EUR/MWh)¹⁴.
- (17) The aid is granted in the form of an *ex ante* reduction from the RES levy. The Croatian authorities explained that, once the reduction is granted by HROTE for one year, it will be applied by the electricity suppliers to EIUs in their monthly electricity bills. Therefore, the reduction is calculated on the basis of each EIU's actual monthly consumption¹⁵.
- (18) Furthermore, in the framework of an *ex-post* monitoring procedure regarding the implementation of the measure, the granting authority HROTE can ask a beneficiary of the aid or the operators of the distribution or the transmission system to provide all necessary information in order to determine whether the right to a reduced RES levy has been properly exercised and, if applicable, order the recovery of any overcompensation¹⁶. The Croatian authorities confirmed that the recovery of any overcompensation will take place before 1 July of the year following the expiration of the aid granting decision.
- (19) For beneficiaries that have been granted the right to reductions in the RES levy in 2021 under the previous measure, reductions in the RES levy will also take the form of an *ex-post* compensation. Such aid will be calculated on the basis of the observed levels of electricity consumption and will be granted for a maximum

¹² *Ibid.*, Article 10(1).

¹³ *Ibid.*, Article 9(1)-(2).

¹⁴ *Ibid.*, Article 12(3). The conversion in Euros is made in accordance with the middle exchange rate of the Croatian National Bank for EUR. Since the Republic of Croatia has entered the Eurozone since 1 January 2023, this provision of the national legal basis will be updated accordingly.

¹⁵ According to Article 17(5) of the draft Regulation, the distribution system operator and the transmission system operator are 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.

¹⁶ See Article 18 of the draft Regulation.

period of one year from the day of the expiry of the decision on the reduction in the RES levy for 2021. *Ex-post* compensation is subject to the following conditions: (i) the applicant meets all the requirements of the measure, and (ii) it has paid the full amount of the RES levy after the expiry of the decision on the reduction in the RES levy for 2021.

- (20) Croatian authorities confirmed that all levy reductions falling within the scope of Section 4.11 of the Guidelines on State aid for climate, environmental protection and energy 2022 (“CEEAG”) ¹⁷ in Croatia are covered by the measure, and that future levy reductions also within this scope will be notified as an amendment to the measure.

2.5. Beneficiaries

- (21) The beneficiaries under the measure will be undertakings that operate in sectors at risk and at significant risk¹⁸, irrespective of their size, in line with the sectors listed in Annex 1 to CEEAG. In the aid application, undertakings have to provide evidence of their main activity obtained from the Croatian Bureau of Statistics for companies or an extract from the corresponding register for craftsmen, not older than one year from the date of submission of the application.
- (22) To be eligible under the measure, undertakings need to consume at least 500 MWh of electricity per year. Croatian authorities noted that, under the previous measure, the minimum level of annual electricity consumption was equal to 1 GWh¹⁹.
- (23) The Croatian authorities have decided to lower the consumption threshold to 500 MWh/year, which may increase the number of possible beneficiaries from 65 to an estimation of 216. Further lowering the threshold below the proposed level would disproportionately increase administrative burden for the public administration, while potential beneficiaries with lower consumption levels would receive limited amounts of aid. Furthermore, the Croatian authorities estimate that the administrative cost for the process of applying for the reduction would outweigh such limited benefits.
- (24) In order to be eligible for the minimum RES levy reduction rate, undertakings have to demonstrate a minimum electro-intensity of 5 %. The Croatian authorities explained that this condition was already included in the previous measure and that an individual electro-intensity below 5 % is not considered to sufficiently increase the relocation risk of undertakings paying the RES levy in full.
- (25) In order to be eligible under the measure, undertakings must have operated for more than one calendar year before their aid application²⁰. The Croatian authorities explained that a minimum of one year of operations for applicants is

¹⁷ Communication from the Commission – Guidelines on State aid for climate, environmental protection and energy 2022, OJ C 80, 18.2.2022, p.1.

¹⁸ Those sectors are set forth in Annex 1 and Annex 2 of the draft Regulation.

¹⁹ See SA.54887 (2020/N) – Croatia – Reduction in the amount of charge for renewable energy sources, recitals (15)-(16) and related footnote.

²⁰ See Article 7 of the draft Regulation.

called for to ensure the existence of sufficient data on electricity consumption. This is necessary for calculating the electro-intensity of the undertaking, which is required to determine eligibility and to assess the applicable reduction rate from the RES levy.

- (26) No aid will be granted to undertakings that:
- a) are in difficulty in accordance with the applicable State aid rules²¹; or
 - b) are subject to an outstanding recovery order following a previous decision by the European Commission declaring an aid illegal and incompatible with the internal market²².
- (27) Lastly, eligible undertakings are obliged to conduct an energy audit within the meaning of Article 8 of Directive 2012/27/EU, irrespective of their size. Furthermore, beneficiaries must meet at least one of the following conditions:
- a) They implement all energy efficiency measures in accordance with the latest energy audit, provided that their payback time does not exceed three years; or
 - b) They reduce the carbon footprint of electricity consumption by providing a minimum of 60 % of the required electricity from RES; or
 - c) They invest at least 50 % of the amount of aid in projects that lead to substantial reductions of the undertaking's greenhouse gas emissions.
- (28) The fulfilment of the conditions mentioned in recital (27) shall be demonstrated on an annual basis, after the expiry of the period for which the aid was granted, and on the basis of:
- a) energy auditors' reports on energy savings, which include all measures implemented. In addition, implemented measures must be recorded in the energy saving, measurement and verification system; or
 - b) consumption of on-site RES generation certified by an energy auditor, and/or power purchase agreements ("PPAs") concluded with RES producers, and/or consumption of RES electricity certified by national or international guarantees of origin ("GOs"), which are cancelled annually. The Croatian authorities further noted that the granting authority HROTE also manages the register of GOs in Croatia²³ and can therefore verify the veracity of the data provided in the framework of the *ex-post* monitoring procedure regarding the implementation of the measure; or
 - c) statements by the verifier of the greenhouse gas ("GHG") emissions of the beneficiary and a verified report confirming that the investment in question

²¹ Communication from the Commission – Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249, 31.7.2014, p. 1).

²² Communication from the Commission – Commission Notice on the recovery of unlawful and incompatible State aid (OJ C 247, 23.7.2019, p. 1).

²³ HRVATSKA ENERGETSKA REGULATORNA AGENCIJA, available here: [Metodologija utvrđivanja podrijetla električne energije \(nn.hr\)](https://www.hrvatska-energetika.hr/uvrdivanje-podrijetla-elektricne-energije).

led to a reduction of GHG emissions level (i) below 90% of the relevant benchmark used for free allocation of emission allowances under the EU Emission Trading System and (ii) below the average emissions of the 10 % best installations as listed in the Commission Implementing Regulation 2021/44712 for the relevant product in the EU ETS.

- (29) If the beneficiary has not complied with the obligations mentioned in recitals (27) and (28), it will be required to reimburse the aid already received.
- (30) Croatian authorities estimate 216 undertakings to be eligible for aid under the measure.

2.6. Functioning of the scheme and aid granting authority

- (31) The granting authority for the measure is HROTE (the “granting authority”).
- (32) In order to obtain a reduction in the RES levy, undertakings will submit to HROTE an application for a reduced RES levy and provide the data about their GVA, annual electricity consumption and annual electricity costs.
- (33) The application must be accompanied by the following documents:
 - a) excerpt from the court register or other appropriate register of undertakings,
 - b) 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,
 - c) certificate of a tax administration on the payment of all due taxes and obligations regarding pension and health insurance and other public benefits,
 - d) evidence of main activity obtained from the Croatian Bureau of Statistics,
 - e) annual financial reports (profit and loss account) for the past three fiscal years submitted to the competent financial authority,
 - f) notarised statement by the undertaking on the total amount of State aid received in the past three fiscal years,
 - g) notarised statement of the undertaking’s total electricity costs covering the same period as the annual financial statements,
 - h) system operator’s statement proving the payment of the network charges for all the undertaking’s metering points,
 - i) electricity supplier’s statement on the total electricity consumption and total electricity costs of the undertaking paid for all its metering points,
 - j) if the undertaking is an excise taxpayer, a notarised statement of the undertaking on the total excise duty paid in the last three fiscal years and all monthly reports on excise duties paid in the same period.

- (34) Undertakings should submit the application no later than 15 September²⁴ of each year. HROTE takes a decision on the application, which is valid for one year from the date in which it becomes enforceable and is published on its website. The reductions are enforceable and applied *ex ante* on the RES levy due in the following 12 months from the 1st of the month following HROTE's decision. However, as regards the duration of the scheme, the Croatian authorities have confirmed that the reductions will not apply beyond the 31 December 2028, as mentioned in recital (43) below.
- (35) 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:
- a) documents mentioned in recital (33) above,
 - b) annual financial report submitted to the Financial agency for the financial year preceding the application,
 - c) annual electricity consumption in the last calendar year preceding the year of application,
 - d) annual electricity costs in the last calendar year preceding the year of application.
- (36) Once the reduction is granted by HROTE, the reductions will be applied by the electricity suppliers to EIUs in their electricity bills from the first day of the month following the date of enforceability of the decision.

2.7. Transitional plan

- (37) The draft Regulation sets out transitional rules for the period between 2022-2027, according to which undertakings that do not operate in eligible sectors under the measure but had obtained the right to pay a reduced amount of the RES levy in the period from 2020 to 2021 on the basis of the previous measure, may be entitled to a reduced RES levy on the basis of the table below²⁵.

Electro-intensity band	RES levy reduction in % by year	
	2022-2026	2027
R1 (from 5 % to 10 %)	20 %	10 %
R2 (more than 10 % to 20 %)	40 %	20 %
R3 (more than 20 %)	60 %	30 %

²⁴ Pursuant to Article 3(6) of the draft Regulation, by way of derogation undertakings which are required to draw up consolidated financial statements can submit their application no later than 1 November.

²⁵ See Articles 13-15 of the draft Regulation.

- (38) Croatian authorities explained that, since 1 November 2013, reductions on the RES levy were granted to undertakings that are obliged to obtain a greenhouse gas emission permit in accordance with the Air Protection Law (“GHG payers”). Aid to GHG payers was notified and brought in line with Section 3.7.3 of the EEAG through an adjustment plan approved under the decision in case SA.54887 (*see* sections 2.6 and 3.3.2). Croatian authorities clarified that GHG payers will not be eligible under the notified transitional plan.
- (39) For the eligible undertakings to benefit from those transitional rules, they have to submit an annual application to HROTE providing the documents mentioned in recital (33), points a), b), c), f), g), h), i) and j), and recital (35), point b), c) and d).
- (40) Croatian authorities explained that transitional rules are necessary for EIUs in Croatia who would no longer be eligible for reduction from the RES levy under the measure. In particular, they explained that the full cost of the RES levy would represent a significant and sudden additional burden on those EIUs.
- (41) The table below shows the share of the full RES levy in the total cost of kWh for beneficiaries of the RES levy reduction in 2021 (based on the three preceding years). This share was on average 15.15 %.

	2018	2019	2020	2021
Share of full RES levy in EIUs’ total electricity costs	15.9 %	15.5 %	15.5 %	13.7 %

Source: Croatian authorities

- (42) On the basis of information available, Croatian authorities explained that, on average, the aid granted was approximately 4% of the total GVA for beneficiaries in 2021. Accordingly, a sudden increase of the RES levy to the full level would cause important difficulties in the operation of those beneficiaries who would not be eligible for the measure, especially in the context of the significant energy prices increase in Croatia.

2.8. Duration and budget

- (43) Croatian authorities indicated that the measure will be implemented only after the notification of the Commission decision approving the measure and will apply until 31 December 2028.
- (44) The total budget of the measure for its entire duration is estimated at EUR 103 700 000²⁶.

2.9. Cumulation

- (45) Croatian authorities confirmed that aid under the scheme cannot be cumulated with other aid or *de minimis* aid received from other local, regional or national aid

²⁶ Specifically, Croatian authorities estimate that the total budget of the measure for its entire duration is Croatian Kuna (HRK) 780.000.000 and the annual budget HRK 130.000.000.

granting authority to cover the same eligible costs so long as such cumulation would result in an amount of aid in excess of the maximum permissible aid intensity levels under the measure.

- (46) Croatian authorities explained that in undertakings' eligibility assessment under the scheme, HROTE examines whether those entities have received any State aid during three years preceding the application process. In particular, undertakings applying for the scheme are required to provide a certified statement of all the aid they have received in the last three fiscal years prior to the application and HROTE can verify the veracity of such information by accessing and reviewing the national State aid register²⁷.
- (47) In any event, if as the result of cumulation, the maximum aid intensity under this measure is exceeded, Croatian authorities confirmed that HROTE would reduce the aid amount accordingly in its decision under the measure.

2.10. Transparency

- (48) Croatia will ensure compliance with the transparency requirements laid down in points 58 to 61 of the CEEAG. The relevant data of the notified measure will be published on national websites (www.hrote.hr, <https://narodne-novine.nn.hr>, <https://mfin.gov.hr>) that will link to the Commission transparency register.

3. ASSESSMENT OF THE MEASURES

3.1. Existence of State aid

- (49) 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”*.
- (50) In order to conclude if State aid is present, the Commission must evaluate whether the cumulative criteria of Article 107(1) TFEU (i.e. transfer of State resources and imputability to the State, selective advantage, potential distortion of competition and effect on intra-EU trade) are met for the measure under assessment.

3.1.1. Selective advantage

- (51) In the present case, EIUs are advantaged because they benefit from a relief in the form of a reduction from the RES levy, which they would normally have to bear in full. The measure is selective as only EIUs within certain sectors, namely those belonging to certain sectors listed in Annex 1 of the CEEAG and complying with the requirements mentioned in Section 2.5 above, may benefit from support under the scheme. Similarly, the measure is also selective with respect to the entities benefiting under the transitional plan because only certain undertakings that were

²⁷ See Article 3 of the draft Regulation.

supported under the previous measure but do not operate in eligible sectors under the measure would be eligible.

3.1.2. State resources and imputability

- (52) Article 107(1) of the TFEU requires that State aid is granted by a Member State or through State resources. Since the measure consists of a reduction of a levy that would otherwise be due, Croatia is foregoing State resources by granting such aid.
- (53) The Commission notes that the rules for the calculation of the reduction of the RES levy stems from the RES Act and the draft Regulation on the Criteria for the Application of the Reduced Levy for Renewable Energy Sources and High-Efficiency Cogeneration (see recital (11)). The State via HROTE exercises control over the reductions from the RES levy. The scheme is administered by HROTE, which verifies the applications by undertakings and delivers the administrative order approving them and granting the levy reductions (see Section 2.6). In the light of those considerations, the Commission observes that the aid is therefore financed from State resources and imputable to the State.

3.1.3. Effect on intra-EU trade and impact on competition

- (54) The potential beneficiaries are EIUs active in sectors listed in Annex 1 of the CEEAG (and under the transitional plan for companies included in Annex 3 and 5 of the EEAG), in which trade between Member States takes place. The measure is therefore liable to distort competition and affect trade between Member States.

3.1.4. Conclusion with regard to the existence of State aid

- (55) For the reasons set out above in recitals (51) to (54), the Commission considers that the measure constitutes State aid within the meaning of Article 107(1) of the TFEU.

3.2. Lawfulness of the aid

- (56) The legal basis of the measure is not in force yet, and it will only be adopted after the notification of the Commission's decision (see recitals (11) and (12)). Croatia therefore complies with the stand-still obligation set out in Article 108(3) TFEU.

3.3. Compatibility of the aid

- (57) The Commission has assessed the compatibility of the measure on the basis of Article 107(3)(c) TFEU. The scheme provides aid to EIUs in the form of reduction in a levy on electricity consumption used to finance electricity production from RES and it aims at mitigating (i) the risk of EIUs moving their activities outside the EU to locations where environmental disciplines are absent or less ambitious as the result of the increasing costs from the full payment of the RES levy as well as (ii) the adverse impacts on the environment, as described in Section 2.2 of the present decision. Therefore, the measure falls within the scope of the CEEAG. More specifically, it falls under the category of aid in the form of reductions from electricity levies for energy-intensive users (see points 16(l) and (400) of the CEEAG).

- (58) The Commission has therefore assessed the measure as support for EIUs under the specific compatibility criteria for aid in the form of reduction from electricity levies for energy-intensive users in CEEAG Section 4.11, which sets out the criteria for assessing the development of an economic activity, incentive effect, necessity, appropriateness, proportionality and competition impact of the aid, as well as the applicable general compatibility provisions in CEEAG Section 3.

3.3.1. Positive condition: the aid must facilitate the development of an economic activity

- (59) 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 activity²⁸.
- (60) Furthermore, State aid can only be considered to facilitate an economic activity if it has an incentive effect. An incentive effect occurs when the aid induces the beneficiary to change its behaviour towards the development of an economic activity pursued by the aid, and if this change in behaviour would otherwise not occur without the aid²⁹.
- (61) Point 400 of the CEEAG sets out that “[f]or certain economic sectors which are particularly exposed to international trade and rely heavily on electricity for their value creation, the obligation to pay the full amount of levies on electricity consumption which finance energy and environmental policy objectives can heighten the risk of activities in these sectors moving outside the Union to locations where environmental disciplines are absent or less ambitious. In addition, such levies increase the cost of electricity compared to the cost of direct emissions resulting from recourse to other energy sources and can therefore discourage the electrification of production processes, which is central to the successful decarbonisation of the Union economy. To mitigate those risks and adverse impacts on the environment, Member States can grant reductions from such levies for companies active in the economic sectors concerned”.
- (62) Point 404 of the CEEAG states that the location decision of the undertakings and the associated adverse environmental impact are dependent on the overall combined financial effect of levies from which reductions can be granted. Therefore, Member States have to include all such reductions in a single scheme and to inform the Commission of the cumulative effect of all eligible levies and all reductions proposed.
- (63) As explained in recitals (9) and (21), the measure applies only to the economic sectors listed in Annex 1 to the CEEAG (and, on a transitional basis, to certain sectors within the scope of the previous measure, as explained in recitals (37) to (42)) which are particularly exposed to international trade and that rely heavily on

²⁸ See judgment in case C-594/18 P, *Austria v Commission*, EU:C:2020:742, paragraphs 20 and 24.

²⁹ See in that sense Section 3.1.2 of the CEEAG, as well as the *Hinkley* judgment (C-594/18 P, *Austria v Commission*, EU:C:2020:742, paragraphs 20 and 24).

electricity for value creation. Following this, for those sectors the payment of the RES levy in full increases the risk of moving their operations outside the EU where environmental rules are more lax (if any). To mitigate those risks, Croatia decided to support those sectors by granting reductions from the RES levy under the measure, and therefore contributing to the development of economic activities in those sectors.

- (64) Croatian authorities confirmed that all RES levy reductions to be granted on the basis of Section 4.11 of the CEEAG are covered by the measure, and that possible future levy reductions falling within the scope of this section will be notified as an amendment to the measure (see recital (20)), in line with point 404 of the CEEAG.
- (65) Lastly, State aid cannot be declared compatible with the internal market if the supported activity, the aid measure, or the conditions attached to it entail a violation of relevant Union law³⁰.
- (66) In the present case, the Commission notes that the measure requires that beneficiaries carry out an energy audit within the meaning of Article 8 of Directive 2012/27/EU (see recital (27)), which is a legal obligation for certain categories of undertakings under Directive 2012/27/EU.
- (67) The Commission has not identified provisions or general principles of Union law which would be violated by the measure under examination. This is without prejudice to the prerogative of the Commission to initiate infringement procedures against a Member State for breach of Union law.
- (68) The Commission therefore concludes that the measure fulfils the first (positive) condition of the compatibility assessment, *i.e.*, that the aid facilitates the development of an economic activity pursuant to the requirements set out in CEEAG Sections 3 and 4.11.

3.3.2. *Negative condition: the aid cannot unduly affect trading conditions to an extent contrary to the common interest*

3.3.2.1. Positive effects of the aid

- (69) The measure will contribute to the development of certain economic sectors particularly exposed to international trade and which rely heavily on electricity for value creation (see recital (63)). In so doing, it also mitigates the environmental impact of the shift of production in locations outside the EU with lower environmental disciplines, as well of the lower take-up of electrification processes within the sectors concerned in the EU.

3.3.2.2. The need for State intervention and eligibility

- (70) Point 405 of the CEEAG provides that aid can only be granted to undertakings operating in sectors at risk and significant risk of relocation outside the EU where

³⁰ Point 33 of the CEEAG, and Judgment of 22 September 2020, *Austria v Commission*, C-594/18 P, EU:C:2020:742, paragraph 44.

environmental disciplines are less ambitious. Sectors meeting these eligibility criteria are listed in Annex 1 to the CEEAG.

- (71) The measure limits eligibility to undertakings operating in the sectors included in Annexes 1 and 2 of the draft Regulation, which correspond to the sectors “at risk” and “at significant risk” listed in Annex 1 to the CEEAG. Croatian authorities will assess if applicants operate in one of these sectors on the basis of recent documentation obtained from the Croatian Bureau of Statistics or from the craftsmen register (see recital (21)).
- (72) In addition, eligibility to undertakings under the transitional plan is limited to undertakings supported in the period from 2020 to 2021 under the previous measure which do not operate in sectors eligible under the measure. For those companies, State intervention is needed because a sudden increase of the RES levy to the full level would cause important challenges in the operation of those beneficiaries who would not be eligible for the measure, especially in the context of the significant energy prices increase in Croatia (see recital (42)).
- (73) Furthermore, as described in recital (24), undertakings have to demonstrate a minimum electro-intensity of 5 % to be eligible for the minimum RES levy reduction rate. The Croatian authorities explained that an electro-intensity below 5 % is not considered to sufficiently affect the relocation risk of undertakings paying the RES levy in full. The Commission notes that this requirement is consistent with the methodology for establishing the eligible sectors under section 4.11 of the CEEAG, which requires sectors to have an electro intensity of at least 5% (see paragraph 405 of the CEEAG).
- (74) Moreover, as explained in recital (22), undertakings need to consume at least 500 MWh of electricity per year to be eligible for the reduction from the RES levy. In the previous measure, the minimum level of annual electricity consumption was equal to 1 GWh. The Croatian authorities explained that this decrease in the level of annual electricity consumption aims at increasing the number of beneficiaries compared to the previous measure. For undertakings with an annual consumption below this threshold, the administrative cost of applying for a reduction is higher than its benefits.
- (75) The Commission considers that these additional eligibility criteria are objective and transparent and do not discriminate between undertakings in a similar factual situation. Therefore, the eligibility criteria for the notified measure comply with points 405 and 407 of the CEEAG.
- (76) As mentioned in recital (26), no aid will be granted to undertakings that:
- a) are in difficulty in accordance with the provisions of the Commission Guidelines on State aid for rescuing and restructuring non-financial enterprises in difficulty; or
 - b) are subject to an outstanding recovery order following a previous decision by the European Commission declaring an aid illegal and incompatible with the internal market.
- (77) The Commission notes that these requirements reflect the conditions of points 14 and 15 of the CEEAG, which are therefore complied with.

- (78) The Commission therefore considers that the measure is necessary to support the economic activities of EIUs.

3.3.2.3. The appropriateness of the aid

- (79) Point 403 of the CEEAG states that “Member States may grant reductions from levies on electricity consumption which finance energy and environmental policy objectives. This includes levies financing support to renewable sources or to combined heat and power and levies financing social tariffs or energy prices in isolated regions. Section 4.11 does not cover levies which reflect part of the cost of providing electricity to the beneficiaries in question”.
- (80) The measure grants reductions only on the RES levy, which stems from the Croatian RES Act (see recital (11)). Therefore, the Commission considers that the conditions under point 403 of the CEEAG are complied with.
- (81) Point 413 of the CEEAG states that “Member States can grant the aid in the form of a reduction in levies, as a fixed annual compensation amount (refund), or as a combination of the two³¹. Where the aid is granted in the form of a reduction in levies, an *ex post* monitoring mechanism needs to be put in place to ensure that any over-payment of aid will be repaid before 1 July of the following year. Where the aid is granted in the form of a refund, it must be calculated on the basis of the observed levels of electricity consumption and, if applicable, the gross value added over the period of time during which the eligible levies were applied”.
- (82) As explained in recitals (17), (19) and (36), both the general *ex ante* reductions and the *ex-post* compensation are passed to the beneficiaries 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 observed consumption, the risk of overcompensation is very limited. In addition, as mentioned in recital (18), HROTE can do further *ex-post* checks to determine whether the right to a reduced RES levy has been properly exercised, and the recovery of any overcompensation will take place before 1 July of the year following the expiration of the aid granting decision. Therefore, the Commission considers that the conditions under point 413 of the CEEAG are satisfied.
- (83) Therefore, the Commission considers that the type of aid chosen for the measure is an appropriate instrument to support the targeted economic activity.

3.3.2.4. The proportionality of the aid, including cumulation

- (84) Point 408 of the CEEAG provides that, in order for the aid to be proportionate, beneficiaries from sectors “at significant risk” and from sectors “at risk” shall pay respectively at least 15 % and 25 % of the costs generated by the electricity levies which a Member State includes in its scheme. Moreover, such reductions must not result in a levy below 0.5 EUR/MWh.

³¹ The use of fixed annual compensations (refunds) has the advantage that undertakings benefitting from the aid face the same increase in the marginal cost of electricity (i.e. the same increase in the cost of electricity for every extra MWh consumed), thereby limiting potential distortions of competition within the sector.

- (85) As explained in recital (15), the measure provides that both beneficiaries operating in sectors “at risk” and in sectors “at significant risk” will pay at least 25 % of the costs generated by the RES levy.
- (86) Furthermore, the draft Regulation provides that, in any event, levy reductions will not result in a levy below 0.5 EUR / MWh (see recitals (16)).
- (87) As described in recitals (13)–(15), aid intensity for eligible undertakings are based on their individual electro-intensity. The Commission notes that such modulation is based on a main determinant of the risk that the measure aims at minimising, as provided in point 405 of the CEEAG. Moreover, the aid modulation is based on objective, non-discriminatory and transparent criteria set forth in the draft Regulation. The Commission considers that the aid is granted, in principle, in the same way for all eligible beneficiaries in a similar factual situation and that the different levy reductions levels comply with point 407 of the CEEAG.
- (88) On the basis of the information above in recitals (85) to (87), the Commission considers that the aid granted under the measure is proportionate.
- (89) As regards cumulation, point 56 of the CEEAG explains that when aid under one measure is cumulated with aid under other measures, Member States must specify the method used to ensure that the total amount of aid for a project or an activity does not lead to overcompensation or exceed the maximum aid amount allowed under the CEEAG.
- (90) As mentioned above (see recitals (45)–(47)), aid can be combined only under the condition that the total amount of the aid does not exceed the maximum allowed intensity. Moreover, the measure foresees checks to ensure compliance with the maximum aid intensity (see recitals (33) and (46)).
- (91) Therefore, the Commission considers that the conditions in point 56 of the CEEAG are fulfilled.

3.3.2.5. Energy audits and management systems

- (92) Point 414 of the CEEAG sets out that Member States “must commit to verifying that the beneficiary complies with its obligation to conduct an energy audit within the meaning of Article 8 of Directive 2012/27/EU”.
- (93) Pursuant to the draft Regulation, when undertakings submit their request for the reduction from the RES levy, they must also submit evidence of conducting an energy audit, irrespective of the size of the undertakings (see recital (27)).
- (94) Point 415 of the CEEAG provides that “[t]he Member State must also commit to monitoring that beneficiaries required to conduct an energy audit under Article 8(4) of Directive 2012/27/EU do one or more of the following: (a) implement recommendations of the audit report, to the extent that the pay-back time for the relevant investments does not exceed 3 years and that the costs of their investments is proportionate; (b) reduce the carbon footprint of their electricity consumption, so as to cover at least 30 % of their electricity consumption from carbon-free sources; (c) invest a significant share of at least 50 % of the aid amount in projects that lead to substantial reductions of the installation’s greenhouse gas emissions; where applicable, the investment should lead to

reductions to a level well below the relevant benchmark used for free allocation in the Union ETS”.

- (95) The Commission notes that the measure establishes requirements that are equivalent or more stringent than the conditions included point 415 of the CEEAG (see recital (27)).
- (96) Moreover, with regard to the means of proving the fulfilment of these requirements (see recital (28)), the Commission notes that:
- a) proof of energy efficiency investments is based on reports from certified energy auditors and on recording in the system for monitoring, measurement and verification of energy savings;
 - b) proof of consumption of electricity from RES is based on consumption through on-site RES generation, a valid power purchasing agreement with a RES generator in place, or on guarantees of origin;
 - c) the combination of the requirements described in recital (28)(c)), namely emissions reductions below both the applicable benchmark for free allocation and the average emissions of the 10 % best installations as listed in the Commission Implementing Regulation 2021/447 for the relevant product in the EU ETS, ensures that the beneficiaries of the measure will reduce their emissions well below the applicable benchmark. In particular, this approach takes into account the actual efficiency gains for the production of a given product and is consistent with the approach followed in the context of other EU instruments, namely the Just Transition Fund³².
- (97) The Croatian authorities will verify that beneficiaries comply with the obligations described in recital (27) on an annual basis (see recital (28)). The Commission considers that a reasonable period of time for implementing one of those obligations.
- (98) Therefore, the Commission considers that the conditions set out in points 414-415 of the CEEAG are met.

3.3.2.6. Transitional rules

- (99) Points 416 of the CEEAG provides that “To avoid disruptive changes in the levy burden for individual undertakings that do not meet the eligibility conditions set out in Section 4.11, Member States can establish a transitional plan for those undertakings”. Points 416-417 of the CEEAG set conditions related to eligibility, proportionality and maximum length of transitional plans.
- (100) The national legal basis of the proposed measure establishes a transitional plan to avoid disruptive changes in the levy burden for individual undertakings that would not meet the eligibility conditions laid down in Section 4.11 of the CEEAG (see recital (40)).

³² Regulation (EU) 2021/1056 of the European Parliament and of the Council of 24 June 2021 establishing the Just Transition Fund (OJ L 231, 30.6.2021, p. 1-20).

- (101) The Commission notes that, in line with point 416(b) of the CEEAG, the draft Regulation, by excluding GHG payers from the eligibility under the transitional plan, limits eligibility to undertakings that met the eligibility criteria of Section 3.7.2 of the Guidelines on State aid for environmental protection and energy 2014-2020 (see recital (38)).
- (102) Point 416(a) of the CEEAG provides that the transitional plan is limited to undertakings that, in at least one of the last 2 years prior to the adaptation under point 468(a) of the CEEAG, received aid in the form of reduced levies under a national aid scheme declared compatible on the basis of Section 3.7.2 of the EEAG.
- (103) Notwithstanding that point 416(a) of the CEEAG refers to the adaptation of an existing measure under point 468(a) of the CEEAG, the Commission notes that Croatia had a previous measure in place granting RES levy reduction until the end of 2021, which was approved in case SA.54887 on the basis of Section 3.7.2 of the EEAG. Furthermore, the measure limits eligibility to the transitional plan to beneficiaries that benefitted from aid in the period from 2020 to 2021 (see recital (37)). As described in recitals (40)-(42), the Croatian authorities have provided evidence of the hardship that undertakings which do not meet the eligibility conditions of the CEEAG would face in the absence of transitional measures.
- (104) On the basis of the above (see recitals (100) to (103)), the Commission considers that the transitional plan provided by the measure is genuinely aimed at avoiding disruptive changes in the levy burden for individual undertakings that do not meet the eligibility conditions set out in Section 4.11 of the CEEAG, that it complies with point 416(b) of the CEEAG and it provides equivalent conditions to those included in point 416(a) of the CEEAG, which are justified by the factual situation of the support to EIUs in the form of RES levy reduction in Croatia.
- (105) Lastly, as described in recital (38), the transitional plan will entail a progressive and complete adjustment to the conditions resulting from the application of the eligibility and proportionality criteria of Section 4.11 of the CEEAG. In particular, the Commission notes that aid intensities under the transitional plan are below the maximum levels indicated in point 417 of the CEEAG and the transitional support would last until 2027.
- (106) Therefore, the Commission considers that the transitional plan included in the measure is in line with Section 4.11.3.5 of the CEEAG.

3.3.2.7. Avoidance of undue negative effects of the aid on competition and trade

- (107) Point 407 of the CEEAG provides that “[s]hould a Member State [...] grant different levels of reductions to eligible beneficiaries falling within the same category of either point 405(a) or (b), it must demonstrate that that decision is made on the basis of objective, non-discriminatory and transparent criteria and that the aid is granted, in principle, the same way for all eligible beneficiaries in the same sector if they are in a similar factual situation”.
- (108) In light of the considerations in recitals (73)-(75) and (87), the Commission considers that the eligibility requirements and the modulation of aid granted across beneficiaries – essentially based on the electro-intensiveness of the

beneficiary – are based on objective, non-discriminatory and transparent conditions and they ensures the minimization of distortions on competition and trade, in line with point 407 of the CEEAG.

- (109) Furthermore, point 70 of the CEEAG explains that the Commission will approve measures under the CEEAG for a maximum period of 10 years. As stated in recital (43), the scheme will run for six years, therefore the requirement in point 70 of the CEEAG is respected.
- (110) The Commission therefore considers that aid granted under the measure avoids undue negative effects on competition and trade.

3.3.2.8. The transparency of the aid

- (111) Croatia will ensure compliance with the transparency requirements laid down in points 58 to 61 of the CEEAG. The relevant data of the notified measure will be published on national websites that will link to the Commission's transparency register³³ (see recital (48)).
- (112) This information will be published after the decision to grant the aid has been taken, it will be kept for at least 15 years and it will be available to the general public without restrictions.

3.3.3. *Weighing up the positive and negative effects of the aid*

- (113) Points 402 of the CEEAG provides that “[t]he Commission has used appropriate measures to identify those sectors which are particularly exposed to the risks mentioned in point 400 and it has introduced proportionality requirements taking into consideration that, if the levy reductions are too high or awarded to too many electricity consumers, the overall funding of support to energy from renewable sources might be threatened and distortions of competition and trade may be particularly high”.
- (114) It follows that Croatia, by observing compliance with the eligibility and proportionality conditions of Section 4.11 of the CEEAG³⁴, ensures that both distortions on competition and trade and negative effects on support to energy from RES are kept in check.
- (115) Moreover, the Commission notes that the measure is open to all undertakings, irrespective of their size (see recital (21)). Aid is not awarded on the basis of a competitive tender and is not limited by the number of entrepreneurs. Therefore, all small and medium-sized entrepreneurs who can meet the eligibility conditions can benefit.
- (116) Further, in accordance with point 76(c) of the CEEAG, the measure is subject to a time limitation because the reduction from the RES levy is time limited to one year (see recital (7)). Potential beneficiaries may apply to HROTE for the RES

³³ <https://webgate.ec.europa.eu/competition/transparency/public>

³⁴ See sub-section 3.3.2.2 for compliance with the eligibility conditions of Section 4.11 of the CEEAG and sub-section 3.3.2.4 of this decision for compliance with the proportionality requirements of Section 4.11 of the CEEAG.

levy reduction in the year(s) to follow, provided that they meet the eligibility criteria.

- (117) In addition, support to companies which are eligible under the transitional plan (see recitals (37)-(42)) would prevent the disruptive effects of paying the full cost of the RES levy. Bearing this cost in full would represent a significant and sudden additional burden on those EIUs in the context of significant energy price increases in Croatia.
- (118) Therefore, the Commission concludes that the positive effects of the measure outweigh the negative effects on the internal market

3.3.4. Conclusion on the compatibility of the measure

- (119) The Commission concludes that the aid facilitates the development of an economic activity and does not adversely affect trading conditions to an extent contrary to the common interest. Therefore, the Commission considers the aid compatible with the internal market based on Article 107(3)(c) TFEU and on the relevant points of CEEAG.

4. AUTHENTIC LANGUAGE

- (120) As mentioned in recital (3), Croatia 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 on the grounds that it is compatible with the internal market pursuant to Article 107(3) of the Treaty on the Functioning of the European Union.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President