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**Subject: State Aid SA.63176 (2021/N) – Belgium
Green energy certificates in Wallonia**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 20 May 2021, Belgium 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 scheme consists of a green energy certificates ('GECs') scheme supporting the production of electricity from renewable sources in Wallonia (the 'GECs scheme' or the 'scheme').
- (2) Belgium provided additional information on 26 April 2022, 24 January 2023, 26 April 2023, 22 December 2023, 25 January 2024, 15 February 2024, 27 March 2024 and 29 April 2024.
- (3) On 26 March 2024, Belgium exceptionally agreed to waive its rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958 ⁽¹⁾ and to have this Decision adopted and notified in English.

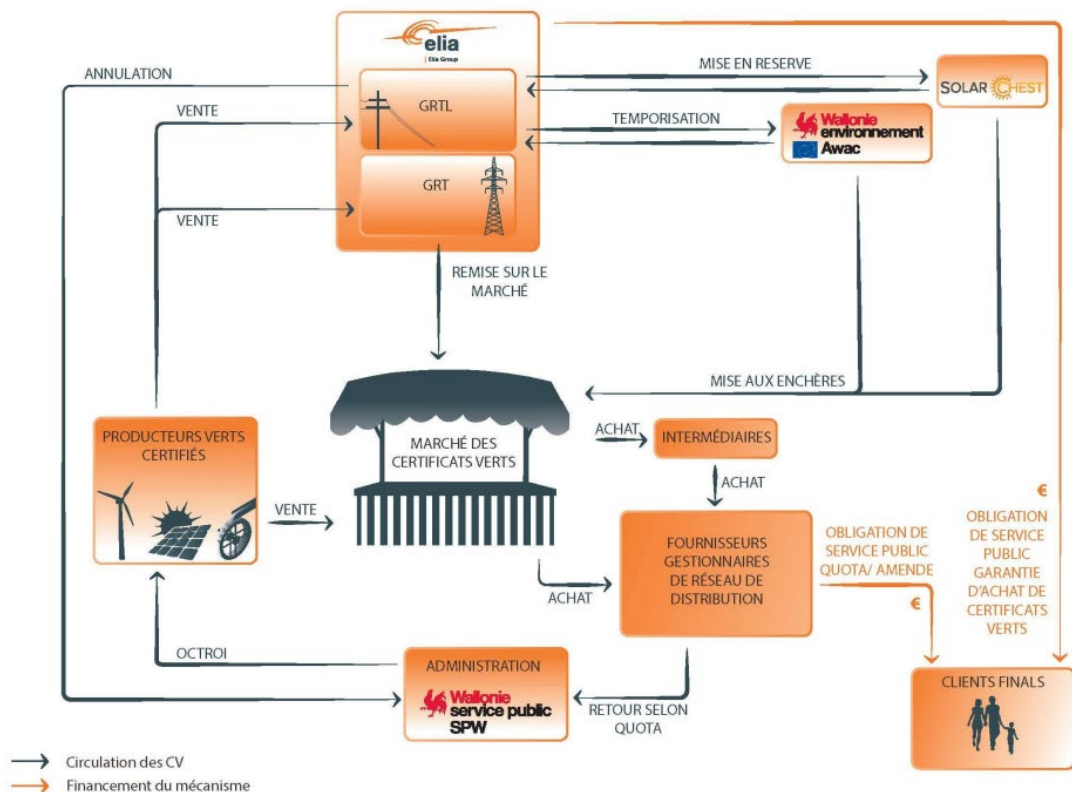
⁽¹⁾ Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385).

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2. DESCRIPTION OF THE SCHEME

- (4) The scheme supports the production of electricity from renewable energy sources ('RES') by granting GECs to RES producers.
- (5) The main characteristics of the GECs scheme, which are further detailed in the decision, are:
- On one side, RES producers receive GECs for the electricity they produce from RES (see section 2.4);
 - On the other side, Walloon electricity suppliers and distribution system operators ('DSOs') must transfer to the Walloon authorities a certain number of GECs at the end of each quarter (the 'quota obligation'). To meet their quota obligation, they can buy GECs from RES producers (see section 2.5.1).
 - Alternatively, RES producers can also sell their GECs to the Belgian transmission system operator ('TSO'), Elia Transmission Belgium ('Elia'), which has an obligation to buy them at a fixed price (the 'purchase obligation') (see section 2.5.2).
- (6) The graph below illustrates the functioning of the GECs scheme:

Figure 1: Functioning and financing of the GECs scheme



Source: the Walloon authorities

2.1. Objective

- (7) The EU has set a climate protection target of reducing greenhouse gas emissions by at least 55% by 2030, with a view to becoming climate neutral by 2050. ⁽²⁾
- (8) The main objective of the GECs scheme is to promote the production of electricity from RES ('renewable electricity'), in order to contribute to reaching the Union target laid down in the Renewable Energy Directive. ⁽³⁾ The National Energy and Climate Plan ('NECP') submitted by Belgium to the Commission for the period 2021-2030 in implementation of its obligations under the Governance Regulation ⁽⁴⁾ shows that the Walloon Region plans to achieve a total share of renewable energy sources of 27.5 TWh in 2030, including 10 TWh of renewable electricity.
- (9) The scheme aims at offsetting the extra cost of producing renewable electricity (i.e. electricity generated from an energy source such as solar photovoltaic, hydroelectricity, etc.) compared with electricity produced from fossil fuels. The Walloon authorities submit that renewable electricity production would generally not be profitable enough to build a business case without the support mechanism.

2.2. National legal basis and granting authority

- (10) The legal basis of the GECs scheme is (i) the Electricity Decree ⁽⁵⁾, (ii) the Order setting out the detailed rules for the allocation of the GECs, including the various parameters used by the granting authority to calculate the number of GECs to be awarded to RES producers ('PEV Order') ⁽⁶⁾, (iii) the Order on public service obligations in the electricity market ⁽⁷⁾, (iv) the Ministerial Order which determines how the electricity produced from RES is accounted for ⁽⁸⁾, and (v) the Ministerial Order which provides the reference values for the parameters identified in the PEV Order for the allocation of the GECs ⁽⁹⁾. Article 16 of the Walloon Government

⁽²⁾ Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law') (OJ L 243, 9.7.2021, p. 1).

⁽³⁾ Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on promotion of the use of energy from renewable sources (recast) (OJ L 328, 21.12.2018, p. 82).

⁽⁴⁾ Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the governance of the Energy Union and Climate Action, amending Regulations (EC) No 663/2009 and (EC) No 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2012/27/EU, 2009/31/EC, 2009/73/EC, 2010/31/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No 525/2013 of the European Parliament and of the Council (OJ L 328, 21.12.2018, p. 1).

⁽⁵⁾ Walloon Government Decree of 12 April 2001 on the organisation of the regional electricity market, as amended.

⁽⁶⁾ Walloon Government Order of 30 November 2006 on the promotion of electricity produced from renewable energy sources or cogeneration, as amended.

⁽⁷⁾ Walloon Government Order of 30 March 2006 on public service obligations in the electricity market, as amended.

⁽⁸⁾ Ministerial Order of 12 March 2007 laying down the procedures and the Electricity metering code produced from renewable energy sources and/or cogeneration, as amended.

⁽⁹⁾ Ministerial Order of 24 November 2022 determining the grant rate and the reference values used to calculate the support level granted on the basis of the green certificate regime referred to in article 15,

Order of 24 November 2022 modifying the PEV Order contains a standstill clause which sets out that the methodology for setting the number of GECs, as further described in section 2.4, will only enter into force after the notification of the current decision. ⁽¹⁰⁾

- (11) The Department of Energy of the Directorate-General for Regional Planning, Housing, Heritage and Energy of the Walloon Region Administration (the ‘granting authority’) is responsible for awarding GECs to the scheme’s beneficiaries. It is also responsible for monitoring the mechanism.

2.3. Beneficiaries

- (12) The beneficiaries of the GECs scheme are the RES producers. The different RES technologies eligible for support under the GECs scheme include photovoltaic (above 10 kW), wind power, hydroelectricity, solid biomass, biogas and biomethane and geothermal energy. The table below shows the GECs scheme’s supported technologies and corresponding maximum duration of support.

Table 1 - Supported technologies and maximum period of support

Technologies	Period of support
High power photovoltaic (> 10 kW)	10 years
Wind power	20 years
Hydroelectricity	25 years
Solid biomass	15 years
Biogas and biomethane	15 years
Geothermal energy ⁽¹¹⁾	25 years

Source: the Walloon authorities

- (13) The scheme supports the construction of new installations, the extension of existing installations and investments to prolong the operation of existing installations.
- (14) Belgium confirmed that any party wishing to receive aid in relation to an eligible project had to submit an application to the granting authority. No aid can be paid prior to this application process being successfully completed. Belgium further confirmed that aid can be granted only to beneficiaries that have not started works prior to the submission of their application for the scheme. ⁽¹²⁾

§1er bis/2, of the extensions regime referred to in article 15ter/1 and the prolongations regime referred to in article 15ter/2 of the Walloon Government Order of 30 November 2006 on the promotion of electricity produced from of renewable energy sources or cogeneration, not yet published, nor in force.

⁽¹⁰⁾ Walloon Government Order of 24 November 2022 modifying the Walloon Government Order of 30 November 2006 on the promotion of electricity produced from renewable energy sources or cogeneration, not yet in force.

⁽¹¹⁾ Support to geothermal energy is only foreseen from 2025.

⁽¹²⁾ ‘Start of works’ means the first firm commitment (for example, to order equipment or start construction) that makes the investment irreversible. The buying of land and preparatory works such as obtaining permits and conducting preliminary feasibility studies are not considered as start of works. For take-overs, ‘start of works’ means the moment of acquiring the assets directly linked to the acquired establishment.

- (15) The application includes the applicant's name, a description of the project or activity, including its location, and the amount of aid needed to carry it out. It also needs to include:
- (a) A copy of the permit(s) or authorization decision in relation to the installation;
 - (b) The business plan of the project;
 - (c) The detailed study or connection offer from the grid operator required to confirm the possibility of connection and injection into the grid.
- (16) In their application, applicants must also provide an implementation schedule for their project and indicate a date from which they will start operating. If this date is exceeded, the period of support will be reduced accordingly (except if the delay is due to external causes).
- (17) Belgium submitted that the scheme complied with all relevant sector-specific legislation. In particular, Belgium confirmed that the scheme complied with the Renewable Energy Directive and its implementing or delegated acts, and notably with the sustainability and greenhouse gas emissions saving criteria for biofuels, bioliquids and biomass fuels (e.g., solid biomass and biogas).
- (18) No aid will be granted to undertakings that:
- (a) are in difficulty, as defined by the Commission Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty; ⁽¹³⁾
 - (b) or are subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market. ⁽¹⁴⁾
- (19) In order to alleviate any possible issues of compliance with Articles 30 and 110 TFEU, Belgium committed to allowing installations located in the territory of other Member States of the European Union to receive support under the scheme subject to the following conditions:
- (a) there is a cooperation agreement with the Member State where the installation will be located;
 - (b) the agreement establishes a reciprocity system and the modalities by which proof of physical import of electricity to Belgium is provided;
 - (c) the installations comply with the same requirements applicable to installations located in the Walloon region.

⁽¹³⁾ 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).

⁽¹⁴⁾ Communication from the Commission – Commission Notice on the recovery of unlawful and incompatible State aid (OJ C 247, 23.7.2019, p. 1).

2.4. The granting of GECs

- (20) Under the scheme, RES producers which introduce a request to benefit from the GECs scheme from the entry into force of the Walloon Government Order of 24 November 2022 ⁽¹⁵⁾, will receive a number of GECs that is determined based on the amount of renewable electricity produced, a CO₂ performance factor ⁽¹⁶⁾ and a grant rate ('taux d'octroi') ⁽¹⁷⁾. This is further detailed below.
- (21) The PEV Order specifies that the electricity produced and injected in the network when it is sold at negative prices and in periods when the day-ahead prices on the Belgian spot market are negative for at least six consecutive hours is not included in the calculation of the number of GECs granted. ⁽¹⁸⁾
- (22) Belgium commits that the Walloon authorities will reduce the maximum number of consecutive hours constituting a period of negative electricity prices during which concerned operators of RES installations selling electricity on the Belgian spot market will be eligible to receive GECs, which will be brought to 0 by 1 January 2027, as follows:
- (a) as a first step the number will be reduced to 3 consecutive hours as of the 1st day of the month following the entry into force of the order amending the PEV Order until 31 December 2025.
 - (b) as a second step, the number will be reduced to 2 consecutive hours as of 1 January 2026 until 31 December 2026.
 - (c) as a final step, support in times of negative prices will be completely phased out by 1 January 2027.
- (23) This phase-out plan shall apply to all installations that introduce a request to benefit from the GECs scheme from the first day of the month following the entry into force of the order amending the PEV Order. The number of non-remunerated negative price hours will be added at the end of the support period.
- (24) Belgium explains that an immediate reduction to 0 is not possible for system stability reasons. Specifically, the Walloon authorities pointed out that it is necessary that the phase-out takes place gradually for system security reasons as the market participants need to adapt their behaviour to the new circumstances and take into account the new rules when applying to the scheme. In the current context of the energy crisis, changes in legislation should reflect the need for gradual transition. The Walloon authorities further indicated that the phase-out also gives

⁽¹⁵⁾ The Walloon Government Order of 24 November 2022 will only enter into force after the notification of the current decision (see recital (10)). The new calculation methodology for granting GECs, subject of the Government Order of 24 November 2022, is available on the website of the Energy Department of the Walloon Administration: <https://energie.wallonie.be/fr/methodologie-cpma.html?IDC=10369>.

⁽¹⁶⁾ The CO₂ performance factor measures the CO₂ saving rate of the installation in comparison to a reference saving factor for the category the installation belongs to and is comprised between 0 and 1.

⁽¹⁷⁾ The 'grant rate' is expressed in GEC/MWh and is comprised between 0 and 2.5.

⁽¹⁸⁾ This rule does not apply to installations with a capacity of less than 400kW, for installations that enter in operation before 1 January 2026, and less than 200kW, for installations that enter in operation from 1 January 2026.

the possibility to observe the market reaction to the changes and find European-wide solution for this problem.

2.4.1. The initial grant rate

- (25) The Walloon authorities explained that for each installation entering the scheme, an initial grant rate is calculated based on reference values (set and revised annually by the Ministry) on the basis of the technology and size of the installation.
- (26) The Walloon authorities have identified different reference projects for all the eligible technologies, depending mainly on the size of the installation, but also on other parameters such as the height of the installation for wind turbines and the raw material used for solid biomass and biogas. These reference projects were provided to the Commission. For each reference project, the Walloon authorities determine an initial grant rate.
- (27) The initial grant rate is determined for each reference project based on the difference between the Levelized Cost of Electricity (‘LCOE’) and the value of the renewable electricity produced over the economic lifetime of the installation.
- (28) The table below presents the various parameters, including costs and revenues, used by the Walloon authorities to determine the level of support to be granted to RES producers per type of technology and category eligible under the GECs scheme for new installations. The values provided in the table below are only given for illustrative purposes and do not prejudice the actual values that will be used in practice by the granting authority. Moreover, the reference values will be reassessed each year for new requests based on the same parameters. The Walloon authorities indicated that the provisional calculation is mainly based on market data and studies and is updated annually by the Walloon authorities.

Table 2 – Examples of provisional grant rate calculations for 2024 for new installations

Supported technology	PV 10- 1000kW	Hydro 0-5kW	Wind turbines 300kW-1MW (75-100 m height)	Wind turbines 1MW- 2.5MW (100-150 m height)
Technical input parameters				
operating hours per year	956	3 942	1 910	2 250
gross electric power (kWe)	500	5	500	2 200
Costs				
CAPEX (EUR HTVA/kWc)	700	12 500	1 910	1 420
OPEX (EUR HTVA/kWc)	12	248	57	42
Indexing				

Operating and maintenance costs (%/year)	2.00%	2.00%	2.00%	2.00%
Financials				
Duration of economic lifetime	20 years	35 years	20 years	20 years
WACC	4.60%	5.90%	5.90%	5.90%
LCOE (EUR/MWh)	77.06	296.92	105.53	76.43
Total revenues from electricity production ⁽¹⁹⁾ (EUR/MWh)	102.57	97.73	96.08	96.58
Discounted extra costs (EUR/MWh)	-25.51	198.88	9.45	-20.15
GEC price (EUR/MWh)	67.49	67.49	67.49	67.49
Grant rate (GEC/MWh)	0.00	2.50	0.14	0.00

Source: Walloon authorities

- (29) The Walloon authorities have explained that the initial grant rate is set such as to take into account all main costs (including investment and operation) and revenues of the reference projects. The Walloon authorities have confirmed that potential aid is included in the calculation. The WACC used differs by technology and ranges from 4.6% for PV to 8.9% for biomass and biogas. WACC values may be updated according to financial market evolutions. It is calculated based on a formula that takes into account the relative share between sources of financing (equity and debt), the cost of borrowing on the markets and the risk premiums specific to each plant category.
- (30) In specific cases, the Walloon authorities may define the initial grant rate on a case-by-case basis, based on the same type of parameters as for reference projects but using values that are specific to the eligible installation. This is the case for instance when the LCOE of the installation exceeds by 10% the LCOE of the relevant reference project.
- (31) As shown in Table 2, the initial grant rate can be equal to 0 when the LCOE of the reference project is lower than the value of the electricity produced. In such case, no GECs are given to the RES producer.
- (32) According to the Walloon authorities this system ensures that aid is only given when aid is needed. The Walloon authorities consider that when the installation presents a net extra cost, the beneficiary would not invest in the construction of the installation. The counterfactual scenario is therefore that the beneficiary would not carry out the investment.

⁽¹⁹⁾ Including revenues from the sale of guarantees of origin.

- (33) Support for the expansion of existing RES installations under the scheme consists of the addition to an existing installation (excluding photovoltaic installations) of a new RES producing unit that uses equipment of the existing installation for the purposes of its RES production or the addition of a generating unit, which together with the equipment common to the other existing installation at the RES production site, form a new unit. ⁽²⁰⁾ The same methodology as the one mentioned in recital (27) is used to calculate the initial grant rate, this rate is however set on a case-by-case basis due to the specificities of expansion projects. ⁽²¹⁾
- (34) The Walloon authorities consider that when the expansion project presents a net extra cost, the beneficiary would not invest in the expansion of the installation. The counterfactual scenario is therefore that the beneficiary would not carry out the investment related to the expansion of the existing installation.
- (35) Support for the prolongation of existing RES installations under the scheme covers situations where further investment is needed to extend the operational life of existing installations (excluding photovoltaic installations) beyond the initial support period under the GECs scheme. The methodology described in recital (27) is used to calculate the initial grant rate. ⁽²²⁾ However, the initial grant rate in case of a prolongation is calculated taking into account the specificities of prolongation projects, as the costs for a prolongation are lower than the costs of a new installation. The investment costs taken into account are those related to the prolongation only.
- (36) The aim of this support is to prolong the period during which an existing installation will produce renewable electricity. The Walloon authorities consider that when the prolongation project presents a net extra cost, the beneficiary would likely not invest in the prolongation of the existing installation. The counterfactual scenario is therefore that the beneficiary would not carry out the investment related to the prolongation of the existing installation and would cease to operate the existing installation.

2.4.2. *Control mechanism – annual adjustment of the initial grant rate*

- (37) Every year and for each beneficiary, the applicable grant rate is adjusted according to market price fluctuations in relation to the values used to set the initial grant rate, and in particular the evolution of the market price of electricity, GECs as well as the costs of fuels (where relevant). The adjusted grant rate for year n is the one used to calculate the number of GECs granted to the installation in relation to year n.

⁽²⁰⁾ The Walloon authorities explained that for projects to be considered under this category, the use of at least part of the equipment of an existing installation site which is necessary for the operation of the expansion is required.

⁽²¹⁾ The initial grant rate for expansion projects will be determined for each installation by the difference between the LCOE and the value of the electricity produced from RES over the economic lifetime of the installations (same as for new installations). However due to the specificities of expansion projects no reference projects with baseline values can be identified. The initial grant rate will however be capped at the initial grant rate applicable to a new reference installation falling under the same category as the expansion project.

⁽²²⁾ The Walloon authorities explained that the initial grant rate will be capped at the initial grant rate applicable to a new reference installation falling under the same category as the prolongation project. For prolongation projects, the Walloon authorities provided reference projects with baseline values.

The Walloon authorities explained that this mechanism is in place to avoid risks of overcompensation.

- (38) The scheme also foresees a control mechanism on the investments made by the RES producer. If there is a significant difference with the information used to define the initial grant rate, on technical or financial aspects, the Walloon authorities will recalculate the grant rate and recoup the difference.

2.5. The sale of GECs

- (39) RES producers can sell their GECs:
- (a) on the market, directly or indirectly, to electricity suppliers or DSOs to enable them to fulfil their quota obligation; or
 - (b) to Elia, at a price of EUR 65/GEC.

2.5.1. The quota obligation

- (40) Every quarter, the suppliers and DSOs are obliged to transfer a certain number of certificates corresponding to their quota obligation to the Walloon authorities. ⁽²³⁾ They can obtain the GECs by producing renewable electricity themselves or by purchasing them from RES producers.
- (41) The quota is calculated:
- for the supplier, on the basis of electricity consumed by the supplier for its own use and on the basis of the electricity supplied by the latter to final customers located in the territory of the Walloon Region, irrespective of the voltage level of the system to which those customers are connected;
 - for the DSO, on the basis of the electricity consumed by the system operator for its own use and, where applicable, on the basis of electricity supplied to final customers supplied by that system operator. ⁽²⁴⁾
- (42) The GECs transferred by the suppliers and DSOs to the Walloon authorities to meet their quota obligation are then cancelled.
- (43) Depending on developments in the renewable electricity market, the Walloon Government may review the quotas as part of a three-yearly evaluation process.
- (44) The Walloon authorities provided a forecast for the development of the GECs market between 2022-2030 showing that the expected demand for GECs is projected to be structurally lower than the supply of GECs throughout the duration of the envisaged support. ⁽²⁵⁾

⁽²³⁾ Article 25 of PEV Order.

⁽²⁴⁾ Article 25 (2), 1° and 2, of PEV Order.

⁽²⁵⁾ Rapport annuel CV 2021, p.93 : <https://energie.wallonie.be/servlet/Repository/ra-2021.pdf?ID=68969>.

Table 3 – Forecast for the development of the Walloon GECs market between 2022-2030

		2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
O F F R E	Nb de CV à octroyer - régime KECD	2 400 074	2 893 084	3 357 663	3 680 674	3 822 987	3 921 428	4 007 596	4 067 319	4 156 530	
	Nb de CV à octroyer - régime non KECD	3 655 864	3 725 270	3 520 419	3 219 902	3 068 026	2 949 658	2 792 538	2 632 421	2 578 646	
	Nb de CV à octroyer - Solwatt	1 586 452	865 094	608 731	429 910	303 164	43 985	0	0	0	
	Nb total de CV à octroyer	7 642 390	7 483 448	7 486 812	7 330 486	7 194 177	6 915 072	6 800 134	6 699 740	6 735 176	
	Retour marché des CV mis en réserve en 2015/2	1 320 737	0	0	0	0	0	0	0	0	
Nb total de CV arrivant sur le marché (offre)		8 963 127	7 483 448	7 486 812	7 330 486	7 194 177	6 915 072	6 800 134	6 699 740	6 735 176	
D E M A N D E	Fourniture éligible aux CV (en MWh)	19 920 111	19 841 175	19 711 801	19 486 102	19 356 671	19 227 209	19 097 716	18 968 191	18 838 635	
	Quota nominal (% de fourniture)	39,33%	39,80%	40,28%	43,34%	43,13%	43,91%	43,74%	43,84%	44,51%	
	Quota effectif (% de fourniture)	30,28%	30,65%	31,02%	33,37%	33,21%	33,81%	33,68%	33,76%	34,27%	
Nb de CV à restituer selon le quota (demande)		6 032 626	6 080 527	6 113 733	6 502 863	6 428 370	6 500 854	6 432 072	6 403 054	6 456 509	

Source: the Walloon authorities

- (45) Suppliers and DSOs failing to achieve their annual quota must pay an administrative fine to the Walloon authorities. The amount of the fine is set at EUR 100 for each missing GEC. ⁽²⁶⁾
- (46) The Walloon authorities indicated that the objective of the fine is to create an incentive for suppliers and DSOs to buy GECs while at the same time it sets a cap to the GEC price. In this context, the Walloon authorities pointed out that their provisions to avoid overcompensation described in recitals (37) and (38) are much more granular than the penalty and therefore achieve a better result than the penalty in avoiding overcompensation of the RES producers.
- (47) In practice, the cost of the quota obligation is passed on to the end consumers as part of the price of the ‘energy’ component charged by the suppliers. ⁽²⁷⁾ There is however no legal obligation for the supplier to pass on the financial burden to end customers.

2.5.2. The public service obligation to purchase GECs from system operators, in particular Elia

- (48) Article 34 of the Electricity Decree imposes a number of public service obligations on DSOs and on the TSO, in particular as regards GECs.
- (49) The DSOs’ GEC quota obligation is one of such public service obligations. ⁽²⁸⁾
- (50) As regards Elia, it has, *inter alia*, the public service obligation to purchase the GECs granted to RES producers, at the price of EUR 65/GEC set by the Walloon authorities (see recital (39)(b) above), if these producers ask to benefit from this purchase obligation. ⁽²⁹⁾

⁽²⁶⁾ Article 30 of PEV Order. The proceeds of the fine go into a fund that supports the promotion of RES in Wallonia.

⁽²⁷⁾ In the interest of transparency, the Walloon Government Order of 30 March 2006 requires suppliers to indicate in the contract and on the bills with customers the specific amounts corresponding to the passing along of the cost of GECs.

⁽²⁸⁾ Article 34 §1, 4°, b) and c) of the Electricity Decree.

⁽²⁹⁾ Article 34 §1, 4°, d) of the Electricity Decree and article 40 of the Electricity Decree.

- (51) The price of one GEC under Elia's purchase obligation is set at EUR 65. ⁽³⁰⁾
- (52) Elia finances this obligation through a regional surcharge legally imposed on and due by final consumers applied to the electricity drawn by final customers connected at a voltage level below or equal to 70 kV. ⁽³¹⁾ Each year, Elia submits to the national regulatory authority (Commission de Régulation de l'Electricité et du Gaz ('CREG')) a tariff proposal for its purchase obligation for review and approval. ⁽³²⁾ For 2023, the tariff was set at 10.38 EUR/MWh.

2.6. Budget and duration

- (53) The estimated maximum budget of the scheme for the period 2024-2028 amounts to EUR 755 million. This amount corresponds to the estimate of GECs to be effectively issued in the period 2024-2028 under the methodology described in section 2.4, at a maximum price of EUR 100 per GEC, which corresponds to the level of the penalty.
- (54) The scheme will apply until 31 March 2028.

2.7. Cumulation

- (55) The Walloon authorities indicated that the scheme can be cumulated with other aid measures for the same eligible costs.
- (56) The Walloon authorities however confirmed that any potential aid under other measures is taken into account when calculating the initial grant rate, so that the total amount of aid for a project does not lead to overcompensation and the level of support is limited to what is strictly necessary to offset the additional costs associated with producing renewable electricity.
- (57) Furthermore, the Walloon authorities confirmed that they would ensure compliance with the cumulation rules laid down in points 56 and 57 of the Guidelines on State aid for climate, environmental protection and energy ('CEEAG'). ⁽³³⁾

2.8. Transparency

- (58) The Walloon authorities will ensure compliance with the transparency requirements laid down in points 58 to 61 CEEAG and will publish the relevant data of the GECs scheme on the website of the granting authority ⁽³⁴⁾.

⁽³⁰⁾ Article 24 quinquies of the Walloon Government Order on public service obligations in the electricity market of 30 March 2006.

⁽³¹⁾ Article 42bis, § 1 of the Electricity Decree: 'All the costs of the public service obligations borne by the local transmission system operator in accordance with Article 34, 4°, d), [...] shall be covered by an overload due by final customers connected to a voltage level not exceeding 70 kV'.

⁽³²⁾ Article 12(5) to 12(8) of the federal law of 29 April 1999 relating to the organisation of the electricity market (the 'Electricity Law').

⁽³³⁾ Communication from the Commission – Guidelines on State aid for climate, environmental protection and energy 2022 (OJ C 80, 18.2.2022, p. 1).

⁽³⁴⁾ Available at: <https://energie.wallonie.be>.

2.9. Evaluation report

- (59) Belgium notified, together with the scheme, an evaluation plan, taking into account the best practices recalled in the Commission Staff Working Document on a Common methodology for State aid evaluation. The main elements of the evaluation plan are described below.
- (60) The evaluation plan describes the objectives of the scheme and comprises evaluation questions that, through both quantitative and qualitative analysis, address the direct and indirect effects of the scheme, as well as its proportionality and appropriateness.
- (61) The questions addressing the direct effect of the aid will mainly investigate the scheme's contributions to: investments in renewable energy sources, the production of energy from RES, reduction of CO₂ emissions, and newly installed renewable generation capacity and energy storage capacity. In addition, the evaluation plan will assess how the demand for GECs (based on the quota obligation) developed over an extended period (e.g., 10 or 15 years) and whether beneficiaries have been affected differently by the aid (e.g. according to their size, location, etc.).
- (62) More specifically, a set of questions will address the indirect effect of the aid (on whether the overall share of renewables increased and whether emissions and final energy consumption have been reduced in line with Belgium's targets), as well as the appropriateness and proportionality of the aid. Specifically, the evaluation plan will assess whether the scheme's effects could have been achieved with less aid or with an alternative form of aid and evaluate whether other forms of aid (such as contracts for difference) and allocation mechanisms (such as competitive bidding) could better meet the scheme's objectives.
- (63) The evaluation will furthermore assess the administrative cost and complexity of the present scheme. In this regard, the evaluation plan will benchmark the present scheme to other aid mechanisms supporting the generation of RES in the EU.
- (64) Moreover, the evaluation plan will assess the impact of the reform of the electricity market design ⁽³⁵⁾ on the proportionality and the appropriateness of the Walloon GECs scheme.
- (65) Furthermore, the evaluation plan includes questions on the functioning of the GECs market and on its competitiveness and efficiency, on the administrative cost of the GECs scheme for the Walloon authorities and Elia as well as for the private companies participating in the scheme, and on the transparency and predictability of the scheme.
- (66) The evaluation plan describes the result indicators that will be used to measure the degree of achievement of the scheme's objectives, and which are matched with the evaluation questions, as well as the methodology applied to identify the impact of the scheme. To assess the proportionality and appropriateness of the scheme, the evaluation report will include the following indicators: comparative assessment of the efficacy and appropriateness of GECs schemes in neighbouring countries

⁽³⁵⁾ This question refers to the Commission proposal of 14 March 2023 to reform of the EU electricity market, with the aim of reducing price volatility for consumers and creating favourable conditions for investors in low-carbon energy. The proposal is currently undergoing the legislative process.

(e.g. Luxembourg), the Flemish region and Brussels region and the lessons learnt, the efficacy and appropriateness of the GECs scheme over an extended period.

- (67) The evaluation will be carried out by an independent expert selected by the Walloon authorities taking into consideration its independence and absence of conflict of interest with the beneficiaries and the granting authority, as well as its experience on the valuation of projects and measures.
- (68) An interim evaluation report will be submitted to the Commission by 31 March 2025. The final evaluation report will be submitted by 30 June 2027, i.e., 9 months before the scheme's expiry.
- (69) Belgium commits that the Walloon authorities will inform the Commission before the end of 2024, and jointly agree with the Commission, on the methodology chosen to carry out the evaluation, the data collection plan and the indicators chosen to measure the scheme's direct and indirect impacts, as well as its proportionality and appropriateness.
- (70) The evaluation plan and the evaluation reports will be published on the website of the granting authority (available at: <https://energie.wallonie.be>).

3. ASSESSMENT OF THE SCHEME

3.1. Existence of State aid

- (71) Article 107(1) TFEU provides that *'any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market'*.
- (72) Classification as 'State aid' within the meaning of Article 107(1) TFEU requires four conditions to be satisfied, namely, that there be intervention by the State or *'through State resources'*, that that intervention confer a selective advantage on the beneficiary, that the intervention distort or threaten to distort competition and that it be liable to affect trade between Member States.

3.1.1. Intervention by the State or *'through State resources'*

- (73) A measure may be classified as an intervention by the State or as aid granted *'through State resources'* if, first, the measure is granted directly or indirectly through those resources and, secondly, the measure is imputable to a Member State. ⁽³⁶⁾

⁽³⁶⁾ Judgment of 12 January 2023, *DOBELES HES*, C-702/20 et C-17/21, EU:C:2023:1, paragraph 32; Judgment of 2 March 2021, *Commission v Italy and Others*, C-425/19 P, EU:C:2021:154, paragraph 58 and the case-law cited.

3.1.1.1. Imputability

- (74) In order to assess, in the first place, whether a measure may be attributable to the State, it is necessary to examine whether the public authorities were involved, in one way or another, in the adoption of that measure. ⁽³⁷⁾
- (75) In the present case, the scheme was established by administrative and legislative acts (see section 2.2). Therefore, it is imputable to the Member State concerned.

3.1.1.2. State resources

- (76) In order to determine, in the second place, whether the aid was granted directly or indirectly through State resources, it is important to bear in mind that the distinction made in Article 107(1) TFEU between aid granted ‘*by a Member State*’ and aid granted ‘*through State resources*’ does not mean that all advantages granted by a Member State, whether financed through State resources or not, constitute aid. That distinction simply seeks to prevent the rules of the TFEU in connection with State aid being circumvented merely through the creation of autonomous institutions charged with allocating State aid. ⁽³⁸⁾
- (77) Accordingly, the resources covered by the prohibition laid down in Article 107(1) TFEU include all the financial means by which the public authorities may actually support undertakings, irrespective of whether or not those means are permanent assets of the public sector. ⁽³⁹⁾
- (78) They include, first, those which are directly under the control of the State, that is to say, all the means which are assets of the State and, second, those which are indirectly so, *inter alia* because they form part of the assets of public or private bodies established or designated by the State to administer aid. ⁽⁴⁰⁾ Thus, resources of public undertakings may be regarded as State resources where the State is capable, by exercising its dominant influence over such undertakings, of directing the use of their resources in order to finance advantages to the benefit of other undertakings. ⁽⁴¹⁾ Similarly, where entities distinct from the public authority manage and apportion, in accordance with State legislation, funds financed through compulsory charges imposed by that legislation, those funds may be regarded as State resources where such entities are appointed by the State to manage those resources and are not merely bound by an obligation to purchase by means of their own resources. ⁽⁴²⁾

⁽³⁷⁾ Judgment of 21 October 2020, *Eco TLC*, C-556/19, EU:C:2020:844, paragraph 23 and the case-law cited.

⁽³⁸⁾ Judgment of 28 March 2019, *Germany v Commission*, C-405/16 P, EU:C:2019:268, paragraphs 53 and 54 and the case-law cited.

⁽³⁹⁾ *Ibid.*, paragraph 57 and the case-law cited.

⁽⁴⁰⁾ Judgment of 15 May 2019, *Achema and Others*, C-706/17, EU:C:2019:407, paragraph 50 and the case-law cited.

⁽⁴¹⁾ Judgment of 13 September 2017, *ENEA*, C-329/15, EU:C:2017:671, paragraph 31 and the case-law cited.

⁽⁴²⁾ Judgments of 28 March 2019, *Germany v Commission*, C-405/16 P, EU:C:2019:268, paragraphs 58 and 59, and of 15 May 2019, *Achema and Others*, C-706/17, EU:C:2019:407, paragraphs 54 and 55 and the case-law cited.

- (79) In the case at issue, the State confers market value to an asset handed over to RES producers: the Walloon authorities award GECs, free of charge, to RES producers and Elia then has to buy the GECs, under a public service obligation, from the RES producers.
- (80) It is by virtue of administrative provisions – Article 34, §1, 4°, d), of the Electricity Decree and Article 24quinquies of the Walloon Government Order on public service obligations in the electricity market of 30 March 2006 – that Elia shall buy GECs at a guaranteed price of 65 EUR/GEC whenever RES producers so request (see section 2.5.2).
- (81) This public service obligation to purchase GECs at a guaranteed price ensures that the level of support for RES producers is not undermined by market conditions (such as, an oversupply of GECs).
- (82) Elia’s public service obligation to purchase GECs at the guaranteed price is, under mandatory Belgian legislative and administrative provisions, financed by a regional surcharge owed by end consumers, covered by Elia’s tariff and paid into Elia’s accounts to enable it to fulfil such public service obligation (see section 2.5.2 above).
- (83) The State controls Elia through its parent company, Elia Group. ⁽⁴³⁾ Elia Group holds 99.99% of Elia and the State holds 48% of the shares of – and voting rights in – Elia Group through municipal holding companies Publi-T and Publipart. ‘Other free float’ shares represent 37.4%. ⁽⁴⁴⁾
- (84) Accordingly, a reduction of the resources under the control of the State as a result of the purchase by Elia of GECs under Elia’s public service obligation is sufficiently directly linked to the advantage constituted by the free of charge award of those GECs to RES producers, as these producers would not sell the GECs on the market for less than the minimum price.
- (85) As a result, GECs purchases in the scheme appear to be carried out by an entity that can be assimilated to the State, on the basis of the mandate conferred on it by the Belgian legislation and administrative acts, using the revenue from a tariff component legally imposed on and paid by consumers for that purpose.
- (86) In light of the above, the Commission concludes that the scheme, of which the public service obligation on Elia to purchase GECs is an integral part, involves a transfer of State resources within the meaning of Article 107(1) TFEU.

⁽⁴³⁾ See page 3 of a 2019 document of Elia Group (then called Elia System Operator) entitled ‘Frequently Asked Questions (FAQ)’ on rights offering to existing Elia shareholders: ‘*The Company* [Elia System Operator, later renamed Elia Group] *is directly controlled by Publi-T. In addition, Publi-T and Publipart are acting in concert, meaning that Publi-T and Publipart have concluded an agreement on the concerted exercise of their voting rights with a view to establishing a lasting common policy regarding the Company*’ (20190605_ELIA_FAQ_EN.pdf).

⁽⁴⁴⁾ Moreover, in October 2023, the news reported that the financial arm of the Federal Government, Société fédérale de participations et d'investissement (SFPIM) was preparing to invest in Elia via Publi-T. [Federal Government prepares to invest heavily in high-voltage network Elia \(brusselstimes.com\); <https://www.lesoir.be/541675/article/2023-10-06/energie-le-federal-saprete-investir-massivement-dans-elia>](https://www.brusselstimes.com/federal-government-prepares-to-invest-heavily-in-high-voltage-network-elia))

3.1.2. *Intervention conferring a selective advantage on the beneficiary*

- (87) Under the GECs scheme, the State grants free of charge GECs to RES producers. The State confers on the GECs an economic value by ensuring their tradability to the economic advantage of RES producers – first, by authorising RES producers to sell the GECs and, second, by requiring from suppliers, DSOs and Elia that they purchase the GECs, the State thereby agreeing to the creation of a market for the GECs. ⁽⁴⁵⁾
- (88) Moreover, Elia’s public service obligation ensures that RES producers can sell the GECs on the market above a minimum guaranteed price.
- (89) The advantage granted by the scheme is selective, since it is awarded only to certain undertakings, i.e. RES producers (recital (12)), while other undertakings in a comparable legal and factual situation within the electricity production sector or other sectors (considering that all economic operators should in principle cover their own costs) are not eligible for aid and thus will not receive the same advantage.
- (90) The GECs scheme therefore grants a selective advantage, favouring only certain undertakings producing electricity.

3.1.3. *Distortion of competition and effect on trade between Member States*

- (91) The GECs scheme provides a selective advantage to producers of renewable electricity. These producers sell their electricity in the market which is a liberalised electricity market where cross-border trade takes place.
- (92) The GECs scheme therefore provides a selective advantage to producers of renewable electricity that threatens to distort competition and is likely to affect trade between Member States.

3.1.4. *Conclusion with regard to the existence of State aid*

- (93) In light of the above, the Commission concludes that the GECs scheme involves State aid within the meaning of Article 107(1) TFEU. The Walloon authorities do not contest that conclusion.

3.2. **Compatibility of the aid**

3.2.1 Legal basis for assessment

- (94) The Commission has assessed the compatibility of the scheme on the basis of Article 107(3), point (c) TFEU, which 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*’. In order to be capable of being considered compatible with the internal market under that provision, State aid must meet two conditions, the first being that it must be intended to facilitate the development of certain economic activities or of certain economic areas

⁽⁴⁵⁾ See, by analogy, *Commission v. Netherlands*, C-279/08 P, ECLI:EU:C:2011:551, paragraph 88.

(positive condition) and the second being that it must not adversely affect trading conditions to an extent contrary to the common interest (negative condition).⁽⁴⁶⁾

- (95) In the present case, the GECs scheme aims at promoting the generation of renewable electricity and thus falls within the scope of the CEEAG. The Commission has therefore assessed the GECs scheme on the basis of the applicable general compatibility provisions of the CEEAG (set out in its Section 3), as well as the specific compatibility criteria for aid for the reduction and removal of greenhouse gas emissions including through support for renewable energy and energy efficiency (set out in Section 4.1 CEEAG).

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

3.2.1.1. Contribution to the development of an economic activity

- (96) In line with the requirement that the aid contribute to the development of a certain economic activity⁽⁴⁷⁾, point 23 CEEAG states that, when notifying aid, Member States must identify the economic activities that will be facilitated as a result of the aid and how the development of those activities is supported.
- (97) Point 24 CEEAG explains that aid to prevent or reduce the negative effects of economic activities on climate or the environment can facilitate the development of economic activities by increasing the sustainability of the economic activity concerned. Point 25 CEEAG requires Member States to describe how the aid will contribute to the objectives of Union climate policy.
- (98) The Walloon authorities have explained that the scheme was designed to promote the production of renewable electricity, in order to contribute to reaching the Union target laid down in the Renewable Energy Directive. The scheme will also contribute to reaching the targets set in the NECP submitted by Belgium to the Commission for the period 2021-2030 and the Walloon Region's plans to deploy 10 TWh of renewable electricity by 2030 (see recital (8)).
- (99) The Commission therefore considers that the scheme aims at facilitating the development of an economic activity in accordance with Article 107(3), point (c) TFEU and in line with points 23 to 25 CEEAG.

3.2.1.2. Incentive effect

- (100) 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 aid.⁽⁴⁸⁾

⁽⁴⁶⁾ See judgment in case C-594/18 P, *Austria v Commission*, EU:C:2020:742, paragraph 19.

⁽⁴⁷⁾ See judgment in case C-594/18 P, *Austria v Commission*, EU:C:2020:742, paragraphs 20 and 24.

⁽⁴⁸⁾ 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).

- (101) To demonstrate the presence of an incentive effect, point 28 CEEAG requires the factual scenario and the likely counterfactual scenario in the absence of aid to be identified. Furthermore, point 28 CEEAG requires the incentive effect to be demonstrated through a quantification referred to in Section 3.2.1.3 CEEAG. Point 52 CEEAG explains that a counterfactual scenario may consist in the beneficiary not carrying out an activity or investment.
- (102) The GECs scheme includes many technologies and categories. For each category, the Walloon authorities have identified a reference project (see recital (26)). For each reference project, the Walloon authorities calculate the net extra cost of the project, which is the difference between the LCOE of the project and the expected revenues from the electricity produced (see recitals (27) to (29)). The Commission notes that the calculations include all main investment costs and operating costs of the project. The WACC used differs depending on the technology and is calculated based on a formula that takes into account the relative share between sources of financing (equity and debt), the cost of borrowing on the markets and the risk premiums specific to each plant category.
- (103) The calculations provided by the Walloon authorities to the Commission for 2024 show that for the reference projects with a grant rate above 0, the reference projects present a net extra cost. It is therefore unlikely that these projects will be carried out without aid. These projects, without the aid, are not financially viable. The Walloon authorities consider that, in this case, the most likely counterfactual scenario consists in the beneficiary not carrying out the investment in RES production (construction of a new installation, extension of an existing installation or prolongation of an existing plant) (see recitals (32), (34) and (36)).
- (104) The Commission considers that, when the project presents a net extra cost, the most likely counterfactual scenario in the absence of aid would be the beneficiary not carrying out the project.
- (105) Therefore, the requirements in points 26 to 28 CEEAG are met.
- (106) Point 29 CEEAG stipulates that aid does not normally present an incentive effect in cases where works on the project started prior to the aid application. Point 30 CEEAG further explains that the aid application may take various forms, and must at least include the applicant's name, a description of the project or activity, including its location, and the amount of aid needed to carry it out.
- (107) As explained in recital (14), Belgium confirmed that aid can be granted only to beneficiaries that have not started works prior to the submission of their application for the scheme. In addition, as detailed in recital (15), the application includes the minimum information required in point 30 CEEAG. Therefore, the requirements in points 29 and 30 CEEAG are fulfilled.
- (108) The Commission therefore considers that the scheme has an incentive effect and that the requirements of Section 3.1.2 CEEAG are complied with.

3.2.1.3. No breach of any relevant provisions of Union law

- (109) 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 law. ⁽⁴⁹⁾
- (110) Belgium confirmed that the scheme entailed no violation of any relevant Union law and that the aid complied with the relevant requirements of the Renewable Energy Directive (see recital (17)).
- (111) Furthermore, any levy that has the aim of financing a State aid measure and forms an integral part of that measure needs to comply in particular with Article 30 and 110 TFEU. ⁽⁵⁰⁾
- (112) According to the case law, for a levy to be regarded as forming an integral part of an aid measure, it must be hypothecated to the aid under the relevant national rules, in the sense that the revenue from the charge is necessarily allocated for the financing of the aid and has a direct impact on the amount of the aid and, consequently, on the assessment of the compatibility of that aid with the common market. ⁽⁵¹⁾ In particular, the charge at issue must be levied specifically and solely for the purpose of financing the aid at issue. ⁽⁵²⁾
- (113) In the present case, part of the scheme will be financed through the purchase obligation. The purchase obligation is financed by the revenues from a levy on electricity consumption (see recital (52)).
- (114) As the Commission cannot exclude the existence of hypothecation between the levy and the aid awarded, the Commission has examined its compliance with Articles 30 and 110 TFEU.
- (115) According to the case law, a charge which is imposed on domestic and imported products according to the same criteria may nevertheless be prohibited by the Treaty if the revenues from such a charge are used to support activities which specifically benefit the taxed domestic products. If the advantages which those domestic products enjoy wholly offset the burden imposed on them by the charge, the effects of that charge are apparent only with regard to imported products and that charge constitutes a charge having equivalent effect to custom duties, contrary to Article 30 TFEU. If, on the other hand, those advantages only partly offset the burden borne by domestic products, the charge in question constitutes discriminatory taxation for the purposes of Article 110 TFEU and will be contrary

⁽⁴⁹⁾ Point 33 of the CEEAG, and judgment of 22 September 2020, *Austria v Commission*, C-594/18 P, EU:C:2020:742, paragraph 44.

⁽⁵⁰⁾ Judgment of 17 July 2008, *Essent Netwerk Noord and Others*, C-206/06, EU:C:2008:413, paragraphs 40 to 59. For the application of Articles 30 and 110 TFEU to tradable certificates schemes, see Commission Decision C(2009)7085 of 17.9.2009, State aid N 437/2009 — Aid scheme for the promotion of cogeneration in Romania (OJ C 31, 9.2.2010, p. 8), recitals 63 to 65.

⁽⁵¹⁾ See judgment of 22 December 2008, *Régie Networks v Rhone Alpes Bourgogne*, C-333/07, EU:C:2008:764, paragraph 99 and case law cited.

⁽⁵²⁾ See judgment of 22 December 2008, *Régie Networks v Rhone Alpes Bourgogne*, C-333/07, EU:C:2008:764, paragraphs 100 and 104.

to this provision as regards the proportion used to offset the burden borne by the domestic products. ⁽⁵³⁾

- (116) However, in the present case, as described in recital (19) above, the scheme is accessible to both domestic and other Member States' RES producers. Thus, the revenues from the levy described in recital (52), which bear on electricity from both domestic and other Member States' producers, may be used to support the activity of Walloon RES producers and RES producers from other Member States alike.
- (117) Therefore, that levy constitutes neither a charge having equivalent effect to custom duties (Article 30 TFEU), nor a discriminatory taxation (Article 110 TFEU).
- (118) In light of these considerations, the Commission considers that the scheme does not entail any breach of Article 30 or 110 TFEU. The Commission has no indications from the information provided by the Walloon authorities of any possible breach of any other relevant provision of Union law that would prevent the scheme from being declared compatible with the internal market. Therefore, the Commission considers that the requirements of point 33 CEEAG are fulfilled.

3.2.1.4. Conclusion

- (119) The Commission therefore concludes that the scheme 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 Section 3.1 CEEAG.

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

3.2.2.1. Necessity of the aid

- (120) To demonstrate the necessity of aid, points 38 and 90 CEEAG explain that the Member State must show that the reference project(s) would not be carried out without the aid, taking into account the counterfactual situation, as well as relevant costs and revenues including those linked to measures identified in point 89. Point 89 CEEAG states that Member State must identify the policy measures already in place to reduce greenhouse gas emissions. In addition, point 90 CEEAG states that where support is granted in the form of a certain guaranteed remuneration to limit exposure to negative scenarios, limits to profitability and/or clawbacks linked to possible positive scenarios may be required to ensure proportionality. Finally, to ensure the aid remains necessary for each eligible category of beneficiary, Member States must update their analysis of relevant costs and revenues at least every three years for schemes that run longer than that, as set out in point 92 CEEAG.
- (121) Belgium has identified several reference projects. The Commission recalls its analysis in recitals (102) and (103), and its conclusion in recital (104), that without the aid, the supported projects under the GECs scheme would not be financially viable and would not be carried out.

⁽⁵³⁾ Judgment of the Court of 17 July 2008, *Essent Netwerk Noord e.a.*, C-206/06, EU:C:2008:413, paragraphs 42 et seq.

- (122) Moreover, Belgium showed that the GECs system is necessary to ensure the viability of the RES producers, given that the costs of generating renewable electricity are higher than the electricity market price. Given the current electricity prices, RES installations would not generate enough revenues to cover their costs.
- (123) In addition, Belgium confirmed that it would update its analysis of relevant costs and revenues every year in line with point 92 CEEAG (see recital (28)).
- (124) The Commission therefore considers that the scheme is necessary.

3.2.2.2. Appropriateness

- (125) Point 93 CEEAG states that the Commission presumes the appropriateness of aid for achieving decarbonisation goals – and therefore of aid for renewable energy– provided all other compatibility conditions are met.
- (126) Consequently, given the assessment of the other compatibility conditions (see sub-sections above and below), the Commission considers that the GECs scheme is an appropriate instrument to support the targeted economic activity in a manner that increases environmental protection.

3.2.2.3. Eligibility

- (127) Point 95 CEEAG explains that decarbonisation measures targeting specific activities, which compete with other unsubsidised activities can be expected to lead to greater distortions of competition, compared to measures open to all competing activities. As such, Member States should give reasons for measures which do not include all technologies and projects that are in competition. Furthermore, Member States must regularly review eligibility rules and any rules related thereto to ensure that all reasons provided to justify a more limited eligibility continue to apply for the lifetime of each scheme, as set out in point 97 CEEAG.
- (128) The Commission notes that the scheme is open to all renewable technologies (see recital (12)).
- (129) The Commission therefore considers that the requirements of point 95 CEEAG are complied with.

3.2.2.4. Proportionality including cumulation

- (130) Pursuant to point 47 CEEAG, environmental aid is considered to be proportionate if the aid amount per beneficiary is limited to the minimum needed for carrying out the aided project or activity. Point 103 CEEAG states that aid for reducing greenhouse gas emissions should, in general, be granted through a competitive bidding process.
- (131) However, as an exception to the requirement to grant the aid through a competitive bidding process, point 108 CEEAG stipulates that *‘Member States may also use competitive certificates or supplier obligation schemes to establish the aid amount and allocate aid, provided that:*

(a) demand in the scheme is set below potential supply;

(b) the buyout or penalty price that applies to a consumer or supplier that has not bought the number of certificates required (that is to say, the price which constitutes the maximum that would be paid for support) is set at a sufficiently high level to incentivize compliance with the obligation. However, the penalty price should be based on the quantification referred to in points 51, 52 and 53 to avoid that an excessively high level leads to overcompensation; [...]’⁽⁵⁴⁾.

- (132) In line with point 108 CEEAG, the price of GECs is not fixed in advance but depends on market supply and demand. The GECs scheme is a State aid scheme with market-based system elements. The beneficiaries sell their electricity on the market in the normal market way, subject to competitive pressure from other market participants. They receive GECs that they can sell on the GECs market to obtain additional revenues (the supply side). The demand side of the GECs market results from the ‘quota obligation’ on Walloon electricity suppliers and DSOs, that have to transfer to the Walloon authorities a certain number of GECs at the end of each quarter. For that purpose, they buy GECs from RES producers on the GECs market (see section 2.5.1).
- (133) The price of the GECs is not fixed in advance but their floor and ceiling is set forth in by the law which establishes a minimum price of GECs (being the price at which Elia has to buy the GECs, see recital (51)) and a maximum price (being the established price of the fine, see recital (45)), respectively.
- (134) In light of the above, the Commission considers that the GECs scheme constitutes a ‘competitive certificates or supplier obligation’ scheme as per point 108 CEEAG.
- (135) Regarding the point 108 (a) CEEAG requirement (*i.e.*, that demand in the scheme is set below potential supply), the Walloon authorities provided a forecast for the development of the GECs market between 2022-2030 which shows that the expected demand for GECs is projected to be structurally lower than the supply of GECs throughout the duration of the envisaged support (see Table 3). This projection shows that there would be sufficient competition on price for GECs under the scheme. Following this, the Commission considers that demand in the scheme is set below potential supply and thus the point 108 (a) condition is met.
- (136) In respect of the first part of the point 108 (b) CEEAG requirement (*‘the buyout or penalty price that applies to a consumer or supplier that has not bought the number of certificates required (that is to say, the price which constitutes the maximum that would be paid for support) is set at a sufficiently high level to incentivise compliance with the obligation [...]’*), the Walloon authorities explained that the amount of the fine is currently set at EUR 100 per GEC which is sufficiently higher than the price of GECs on 16 June 2023 (EUR 65,51 per GEC)⁽⁵⁵⁾ and thus enables

⁽⁵⁴⁾ Point 108 (c) CEEAG concerns schemes which involve support for biofuels, bioliquids and biomass fuels. This type of support is not covered by the scheme and thus this requirement is not assessed in the present decision.

⁽⁵⁵⁾ The same pattern has been evidenced in the previous years: on 16 June 2022 the price was EUR 64,30 per GEC, on 2 June 2021 EUR 65,41 per GEC, on 17 June 2020 the price was EUR 68,46 per GEC, on 18 June 2019 the price was EUR 69,77 per GEC, and on 14 September 2018 the price was EUR 69,02 per GEC. For more details, see <https://www.elia.be/en/customers/green-certificates-and-levies-tariffs/federal-auctions-for-gc>.

compliance with the purchase obligation. Following this, the Commission considers that the penalty is set at a level that induces compliance with access holders' purchase obligation.

- (137) Furthermore, with respect to the second part of the point 108 (b) CEEAG requirement concerning the risk of overcompensation ('[...] *However, the penalty price should be based on the quantification referred to in points 51, 52 and 53 to avoid that an excessively high level leads to overcompensation*'), the Walloon authorities submitted that the scheme meets the requirements of points 51, 52 and 53 CEEAG for the purposes of avoiding overcompensation already before it comes to the application of the penalty (see section 2.4).
- (138) Specifically, as explained in recital (25), for each installation entering the scheme an initial grant rate is calculated on the basis of reference values (set and revised annually by the Ministry), which vary depending on the technology and size of the installation.
- (139) The Walloon authorities have identified a reference project for each eligible technology and category, and for each reference project, they determine an initial grant rate (see recital (26)). In specific circumstances (see recitals (30) and (33)), the initial grant rate is calculated at the level of the installations.
- (140) The initial grant rate is determined for each reference project based on the difference between the Levelized Cost of Electricity ('LCOE') and the value of the renewable electricity produced over the economic lifetime of the installation. The calculations include all main investment costs and operating costs of the project over the lifetime of the project as well as a specific WACC depending on the technology.
- (141) The Commission considers that this approach enables to set the level of aid for each beneficiary at a level that limits the risk of overcompensation.
- (142) In addition, the GECs scheme includes an annual support adjustment mechanism (see section 2.4.2). This mechanism will annually adjust the support an installation receives to reflect changes in the value of renewable electricity and in the value of the GECs as well as changes in the cost of fuels, among others. The adjustment is on the grant rate, i.e. the number of GECs that an installation may receive for its renewable electricity production. Belgium explains that this mechanism is in place to further prevent situations of overcompensation.
- (143) The Commission therefore considers that risks of overcompensation have been addressed by the Walloon authorities based on the quantification referred to in points 51, 52 and 53 CEEAG.
- (144) Therefore, the Commission accepts the Walloon authorities' argument that the scheme addresses risks of overcompensation in line with points 51, 52, 53 CEEAG (by technology and category of installations), which is what point 108(b) CEEAG requires.
- (145) In light of the above, the Commission considers that conditions set out in point 108 CEEAG are met.

- (146) Point 55 CEEAG further provides that: *‘Where a competitive bidding process is not used and future developments in costs and revenues are surrounded by a high degree of uncertainty and there is a strong asymmetry of information, the Member State may be required to introduce compensation models that are not entirely ex ante. Instead, these models will be a mix of ex ante and ex post or introduce ex post claw-back or cost monitoring mechanisms, while keeping incentives for the beneficiaries to minimise their costs and develop their business in a more efficient manner over time’.*
- (147) In this respect, the Commission considers that the *ex post* control mechanism mentioned in recital (142) satisfies the requirement of point 55 CEEAG. The Commission considers that under this mechanism, beneficiaries still have an incentive to minimise their costs, in particular those that are not subject to an annual adjustment (e.g. maintenance costs), and be more efficient.
- (148) With regard to cumulation, point 56 CEEAG provides that “[a]id may be awarded concurrently under several aid schemes or cumulated with ad hoc or de minimis aid in relation to the same eligible costs, provided 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 these guidelines. If the Member State allows aid under one measure to be cumulated with aid under other measures, then it must specify, for each measure, the method used for ensuring compliance with the conditions set out in this point”. Moreover, point 57 CEEAG explains that “[c]entrally managed Union funding that is not directly or indirectly under the control of the Member State, does not constitute State aid. Where such Union funding is combined with State aid, it has to be ensured that the total amount of public funding granted in relation to the same eligible costs does not lead to overcompensation”.
- (149) The Commission notes that Belgium committed to comply with points 56 and 57 CEEAG (see recital (57)).
- (150) In particular, as explained in recital (56), any potential aid under other measures is taken into account when calculating the initial grant rate, so that the total amount of aid for a project does not lead to overcompensation and the level of support is limited to what is strictly necessary to offset the additional costs associated with producing renewable electricity.

3.2.2.5. Transparency

- (151) Belgium will ensure compliance with the transparency requirements laid down in points 58 to 61 CEEAG. The relevant data of the scheme will be published on a national website (see recital (58)).
- (152) 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.

3.2.2.6. Avoidance of undue negative effects on competition and trade

- (153) Point 70 CEEAG sets out that the Commission will approve measures under these guidelines for a maximum period of 10 years. As stated in recital (54), the scheme will run until 31 March 2028, so point 70 CEEAG is complied with.

- (154) Point 116 CEEAG explains that the aid must not merely displace the emissions from one sector to another and must deliver overall greenhouse gas emissions reductions.
- (155) The Commission considers that by increasing the production of electricity from renewable sources, the scheme will deliver overall greenhouse gas emissions reductions.
- (156) Point 120 CEEAG explains that Member States must demonstrate that reasonable measures will be taken to ensure that projects granted aid will actually be developed.
- (157) The Commission notes that the scheme involves a pre-qualification process where various information must be provided to demonstrate the feasibility of the project (see recital (15)). In addition, as detailed in recital (16), applicants must indicate a deadline for their plant to be operational, and the duration of the support is reduced if this deadline is exceeded.
- (158) Point 121 CEEAG explains that aid which covers costs mostly linked to operation rather than investment should only be used where the Member State demonstrates that this results in more environmentally-friendly operating decisions. Point 122 CEEAG states where aid is primarily required to cover short-term costs that may be variable, Member States should confirm that the production costs on which the aid amount is based will be monitored and the aid amount updated at least once per year.
- (159) Based on the quantifications provided, the Commission observes that for all reference projects, investment costs are significantly higher than operating costs, so that it can be assumed that the aid will cover costs mostly linked to investment rather than operation (see examples in Table 2). For installations that use fuels as input (e.g. biomass or biogas installations), the Walloon authorities will annually revise the amount of aid granted taking into account changes in the cost of fuels (see recital (37)).
- (160) Point 123 CEEAG requires the aid to be designed to prevent any undue distortion to the efficient functioning of markets and to preserve efficient operating incentives and price signals.
- (161) As mentioned in recital (21), currently no GECs will be granted for hours in which the spot market price is negative, whenever negative prices persist for at least 6 consecutive hours. Belgium has committed to gradually phase-out this rule along the steps specified in recital (22), so that by 1 January 2027, no support will be paid during any time of negative electricity prices, in line with point 123 CEEAG.

- (162) Belgium argues that it is necessary that the phase-out takes place gradually for system security reasons (see recital (24)). The Commission notes that a similar phase-out was put in place in Germany⁽⁵⁶⁾ and Luxembourg⁽⁵⁷⁾.
- (163) In line with footnote 70 CEEAG, under the scheme, small-scale installations⁽⁵⁸⁾ are not obliged to participate in the market and the requirements of point 123 CEEAG do not apply to them (see footnote 18).
- (164) Point 126 CEEAG requires that measures avoid providing incentives for the production of energy that would displace less polluting forms of energy. Point 127 CEEAG explains that aid for decarbonisation may unduly distort competition where it displaces investments into cleaner alternatives that are already available on the market, or where it locks in certain technologies, hampering the wider development of a market for, and the use of, cleaner solutions. The Commission will therefore also verify that the aid measure does not stimulate or prolong the consumption of fossil-based fuels and energy, thereby hampering the development of cleaner alternatives and significantly reducing the overall environmental benefit of the investment.
- (165) As the scheme only targets renewable technologies, it does not stimulate or prolong the consumption of fossil-based fuels and energy. Moreover, according to currently available renewable energy production possibilities, the Commission identifies no risk that the scheme will provide support enabling the displacement of less polluting forms of energy.
- (166) Point 131 CEEAG provides that, where risks of additional competition distortions are identified or measures are particularly novel or complex, the Commission may impose conditions, including the obligation to perform an *ex post* evaluation, as set out in point 76.
- (167) In view of the significant budget of the scheme, the scheme will be subject to an *ex post* evaluation as described in section 2.9.
- (168) Point 132 CEEAG states that for schemes benefiting a particularly limited number of beneficiaries or an incumbent beneficiary, Member States should demonstrate how the proposed measure will not lead to distortions of competition, for example, through increased market power.
- (169) The Commission considers that the GECs scheme is intended to support a large number of beneficiaries, of different sizes and different types, so that that it is not expected that the scheme will benefit a particularly limited number of beneficiaries or an incumbent beneficiary.

⁽⁵⁶⁾ Commission Decision of 21 December 2022 in case SA.102084 (2022/N) – Germany - EEG 2023 (OJ C 61 of 17.2.2023, p. 3).

⁽⁵⁷⁾ Commission Decision of 30 November 2023 in case Aide d'État SA.100561 (2021/NN) – Luxembourg - Production d'électricité basée sur les sources d'énergie renouvelables, prolongation de l'aide SA.37232 (modifiée par les aides SA.43128 et SA.48601) (OJ C 857 of 18.1.2024, p. 1).

⁽⁵⁸⁾ As defined in Article 5 of Regulation (EU) 2019/943, i.e. installations with a capacity of up to 400 kW (200 kW from 1 January 2026).

(170) The Commission therefore considers that aid granted under the scheme avoids undue negative effects on competition and trade.

3.2.3. *Weighing up the positive and negative effects of the scheme*

(171) Point 134 CEEAG states that, provided that all other compatibility conditions are met, the Commission will typically find that the balance for decarbonisation measures is positive (that is to say, distortions to the internal market are outweighed by positive effects) in light of their contribution to meeting Union energy and climate objectives, as long as there are no obvious indications of non-compliance with the ‘do no significant harm’ principle.

(172) The Commission notes that the scheme will contribute to the achievement of Belgium’s energy and climate objectives and that all other compatibility conditions are met. The Commission finds no obvious indications of non-compliance with the ‘do no significant harm’ principle.

(173) Based on the above, the Commission concludes that the positive effects of the scheme outweigh its negative effects on the internal market.

3.2.4. *Evaluation Plan*

(174) Points 455 and 456 CEEAG state that to further ensure that distortions of competition and trade are limited, the Commission may require notifiable aid schemes to be subject to an *ex post* evaluation and that in any event *ex post* evaluation will be required when the State aid budget exceeds EUR 150 million in any given year or EUR 750 million over the total duration of the scheme.

(175) As further explained in point 459 CEEAG, the Member State must notify a draft evaluation plan, which will be an integral part of the Commission’s assessment of the scheme.

(176) In view of the estimated budget (see section 2.6), the scheme will be subject to an *ex post* evaluation. In this context, the Commission required the submission of an evaluation plan, which Belgium submitted in the context of the notification as an integral part of it.

(177) The Commission considers that the notified evaluation plan contains all the necessary elements: the objectives of the scheme to be evaluated, including the evaluation questions, the result indicators, the envisaged methodology to conduct the evaluation and the proposed timing of the evaluation including the date of submission of the final evaluation report (see section 2.9).

(178) The Commission notes that:

- (a) The scope of the evaluation is defined in an appropriate way. It comprises a list of evaluation questions with matched result indicators. Moreover, the evaluation plan explains the main methods that will be used in order to identify the impacts of the scheme;
- (b) Belgium committed, in accordance with the Commission requirements, that the evaluation be conducted according to the notified evaluation plan by an

independent evaluation body in accordance with the criteria laid down in the evaluation plan;

- (c) The proposed modalities for the publication of the evaluation results are adequate to ensure transparency;
 - (d) The commitment made by Belgium to submit to the Commission an interim report by 31 March 2025 and a final evaluation report by 30 June 2027. The Commission notes that the evaluation method might be further fine-tuned in common accord between the Walloon authorities and the Commission, and it will be described in the interim report.
- (179) The Commission also notes that in line with the principle of sincere cooperation, Belgium commits to swiftly inform the Commission and jointly agree with the Commission on a possible solution in case the methodologies foreseen in the evaluation plan cannot be applied.
- (180) The Commission notes that Belgium shall communicate to the Commission any difficulty that could significantly affect the agreed evaluation in order to work out possible solutions.
- (181) Moreover, the Commission notes that the scheme will be suspended if Belgium does not submit the final evaluation report in good time and sufficient quality.
- (182) The Commission therefore considers that the notified evaluation plan meets the requirements of point 76 and chapter 5 CEEAG.

3.2.5. Companies in difficulty and under a recovery order

- (183) As explained in recital (18), Belgium committed not to grant aid under the scheme to undertakings in difficulty and undertakings subject to an outstanding recovery order. Therefore, the Commission concludes that the scheme complies with points 14 and 15 CEEAG.

3.2.6. Conclusion on the compatibility of the scheme

- (184) 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), point (c) TFEU as interpreted by the relevant points of CEEAG.

4. AUTHENTIC LANGUAGE

- (185) As set out in recital (3) above, Belgium has accepted to have the decision adopted and notified in English. The authentic language of this decision 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), point (c) of the Treaty on the Functioning of the European Union.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President