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<p>In the published version of this decision, some information has been omitted, pursuant to articles 24 and 25 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus [...].</p>		<p>PUBLIC VERSION</p> <p>This document is made available for information purposes only.</p>
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**Subject: State aid SA.38701 (2014/NN) – Czech Republic  
Promotion of electricity production from CHP and heat from renewable sources of energy**

Sir,

**1. PROCEDURE**

- (1) Following pre-notification contacts, the Czech authorities notified the above-mentioned measure on 8 January 2013 pursuant to Article 108(3) of the Treaty on the Functioning of the European Union ('TFEU').
- (2) The Czech authorities provided further information requested by the Commission on 4 September 2014; 16 and 27 January, 15 July, 30 October and 13 November 2015; 17 February 2016; 20 January, 3 March, 3 April, 25 May, 9 and 27 June; 11, 13 and 24 July, 8 and 12 December 2017.
- (3) On 16 November 2017 the Czech authorities provided a language waiver and agreed that the decision will be adopted in English as authentic language.

Lubomír ZAORÁLEK  
ministr zahraničních věcí  
Ministerstvo zahraničních věcí České republiky  
Loretánské náměstí 5  
118 00 Praha 1  
Česká Republika

## 2. DETAILED DESCRIPTION OF THE MEASURE

### 2.1. Background and objectives of the notified measure

- (4) The original notification submitted by the Czech authorities on 8 January 2013 encompassed support for electricity production from renewable energy sources ('RES'), support for electricity from co-generation, and support to RES heat production. However, during the course of the notification the case was split. The support for electricity production from RES was assessed separately and was subject to a no objection decision in Commission Decision SA.35177 (2014/NN) *Promotion of electricity production from renewable energy sources*.<sup>1</sup>
- (5) Accordingly, the scope of the current decision is limited to support for the promotion of electricity from high-efficiency combined heat and power ('CHP') installations and support to heat from RES heat installations only.
- (6) The primary objective of the notified measure is environmental protection through promotion of electricity production from high-efficiency CHP and heat from RES.
- (7) According to the Czech authorities, the State support to high-efficiency CHP contributes to the friendly utilisation of natural resources and to the sustainable development of society. The CHP measure also creates conditions to increase energy efficiency, achieve primary energy savings and improve security of energy supply as established by Directive 2012/27/EU of the European Parliament and of the Council ('Energy efficiency Directive').<sup>2</sup>
- (8) The Czech authorities have explained that the promotion of RES heat will also contribute to achieving the mandatory national renewable target established by Directive 2009/28/EC of the European Parliament and of the Council<sup>3</sup> in accordance with the EU 2020 strategy.

### 2.2. National Legal basis

- (9) The national legal basis for the grant of support to electricity from high-efficiency CHP under the notified measure is as follows:
  - § 6 to 13 of Act No. 165/2012 Coll., on promoted energy sources;
  - Decree No. 453/2012 Coll., on electricity from high-efficiency cogeneration of electricity and heat and electricity from secondary sources, which was replaced by decree No. 37/2016 Coll., on electricity from high-efficiency cogeneration of electricity and heat and electricity from secondary sources;
  - Decree No. 478/2012 Coll., on reporting and recording of electricity and heat from supported sources and biomethane, quantity and quality of actually acquired and used resources and to perform certain other

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<sup>1</sup> OJ C 280, 22.08.2014.

<sup>2</sup> Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (OJ L 52, 21.2.2004, p. 1).

<sup>3</sup> Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJ L 140, 5.6.2009, p. 16).

provisions of the Act on promoted energy sources, which was replaced by decree No. 145/2016 Coll., on reporting of electricity and heat from supported sources and to perform certain other provisions of the Act on promoted energy sources (Decree on reporting of energy from supported sources); and

- Decree No. 346/2012 Coll., on the terms and procedures for the selection of the forms of aid, registration procedures for the support of the market operator, deadlines, procedures and changes to green bonus schemes of electricity and the date of offering electricity to the compulsory buyer (Registration Decree), which was replaced by decree No. 9/2016 Coll., on registration procedures for the support of the market operator and the implementation of certain other provisions of the Act on supported energy sources (Registration Decree).

- (10) The national legal basis for the grant of support to heat from RES is provided for at §§ 23, 24, 26 and 27 of Act No. 165/2012 Coll., on promoted energy sources.
- (11) The legal basis of the notified measure also encompasses the price decisions of the Energy Regulatory Office (*Energetický regulační úřad*, 'ERO'), which establishes the support levels for beneficiaries of the CHP and RES heat support schemes in any given year. These price decisions are issued and published annually in the Energy Regulation Gazette.<sup>4</sup>

### **2.3. Beneficiaries**

- (12) The beneficiaries of the notified measure are operators of high-efficiency CHP installations<sup>5</sup> and operators of installations producing RES heat<sup>6</sup> located in the territory of the Czech Republic.
- (13) All beneficiaries operating eligible CHP installations must hold licenses for electricity generation and certificates of origin for electricity from high-efficiency CHP production. Only CHP installations commissioned between 1 January 2013 and 31 December 2015 are eligible to receive support under the notified measure.
- (14) Licence holders for the production of thermal energy may apply for RES heat support provided they use specified types of biomass fuel and geothermal energy.
- (15) The notified measure entered into force on 1 January 2013 but the implementing instruments for the RES heat support defined the eligibility criteria for RES heat as incorporating all installations irrespective of the date of their commissioning, provided these are not yet fully depreciated. As such, the scope of RES heat installations covered by the notified measure includes all eligible installations which

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<sup>4</sup> The texts of annual price decisions can be accessed at the following web address:  
<https://www.eru.cz/cs/elektrina/cenova-rozhodnuti>.

<sup>5</sup> Cogeneration plants meeting the criteria of at least 10 % of primary energy savings compared with the references for separate production of heat and electricity as set out in Annex II of the Energy efficiency Directive, and satisfying the harmonised efficiency reference values established by the Commission delegated regulation (EU) 2015/2402 of 12 October 2015 reviewing harmonised efficiency reference values for separate production of electricity and heat in application of the Energy efficiency Directive.

<sup>6</sup> Installations producing heat from renewable energy sources also include co-combustion installations using renewable sources in combination with non-renewable sources.

entered into the scheme on 1 January 2013 as well as installations commissioned by 31 December 2020.

- (16) The Czech authorities have explained that the scope of the support for RES heat was extended retroactively to installations commissioned prior to 1 January 2013 due to sustained increases in the market price of biomass fuels (over 80 % between 2006 and 2013, see Table 1) and increased geothermal energy production costs (over 30 % increase of electricity prices in the same period with electricity being the most important cost element, see Table 2). According to the Czech Republic, increases in demand for biomass fuels resulted in increases in the market prices of such fuels and of the production costs for RES heat producers. Due to such increases it was deemed necessary to extend RES heat support to installations commissioned prior to 2013 to ensure that such facilities were not forced to cease operation (in the case of geothermal energy) or switch to the combustion of cheaper fossil fuels instead of RES, which would have been detrimental to the Czech Republic's renewable energy targets referred to in recital (8) above.

Prices of biomass fuels (CZK/GJ)									
2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
<b>75</b>	<b>85</b>	<b>95</b>	<b>108</b>	<b>115</b>	<b>123</b>	<b>121</b>	<b>137</b>	<b>133</b>	<b>135</b>

*Table 1. Development of prices of biomass for the production of heat. Source: Czech authorities*

Prices of electricity (EUR/MWh)							
	2006	2007	2008	2009	2010	2011	2012
EUR/MWh	0.0731	0.0778	0.0930	0.0967	0.0957	0.0956	0.0961

*Table 2. Development of prices of electricity. Source: Czech authorities*

- (17) Moreover, the Government of the Czech Republic committed already in its Programme Declaration dated 17 January 2007 that it would mitigate the current and expected increases of prices referred to in Tables 1 and 2. The Programme Declaration stated in this regard that the Czech government would support the production of RES heat by mitigating the price differentials between the individual sources of energy.<sup>7</sup> Following the declaration of the Czech Government, the operators of the installations commissioned prior to 2013 could therefore rely on the fact that a support scheme for RES heat would be introduced in a near future.
- (18) At the time of the taking of this Decision, the numbers of registered beneficiaries were as follows, according to the Czech authorities:

	No. of beneficiaries
Aid for electricity from high-efficiency CHP	335

<sup>7</sup> <https://www.vlada.cz/scripts/detail.php?id=20780>.

Aid for heat from RES	68 registered, of which: <ul style="list-style-type: none"> <li>• 47 commissioned before 2013</li> <li>• 14 in 2013-2015 and</li> <li>• 7 in 2016 -2017</li> </ul>

*Table 3. Registered beneficiary numbers. Source: Czech authorities*

- (19) Installations burning waste as fuel for the purposes of energy production are not eligible to apply for support under the notified measure.
- (20) The Czech authorities have also confirmed that no aid can be granted to undertakings in difficulty or to undertakings subject to an outstanding recovery order following a previous Commission decision declaring aid illegal and incompatible with the internal market.
- (21) Applications for the scheme since at least 1 July 2016 have been made via an application form which complies with the requirements of paragraph (51) of the *Guidelines on State aid for environmental protection and energy 2014-2020* ('EEAG 2014')<sup>8</sup>.

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

- (22) The support for the production of electricity takes the form of the following two types of tariffs:
- i. Basic Tariffs
  - ii. Supplementary Tariffs
- (23) Eligible CHP installations can benefit from a basic tariff in combination with a supplementary tariff.
- (24) The support to RES heat takes the form of a top-up to the market price of heat – the so called "green bonus heat".
- (25) Both the basic and supplementary tariffs represent a top-up to the market price of electricity and are based on production costs which have had revenues from heat production deducted first. Combined, CHP beneficiaries' support is targeted at a pre-tax internal rate of return ('IRR') of 6.33 %. Whether installations are in receipt of the applicable Basic Tariff alone, or are also in receipt of a Supplementary Tariff and/or a support payment for RES heat, it is this target IRR of 6.33 % that will be used as the benchmark to determine whether there has been overcompensation for CHP installations under the monitoring regime outlined below in Section 2.9.1.

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<sup>8</sup> OJ C 200, 28.6.2014.

## 2.4.1. Support to electricity

### 2.4.1.1. Basic tariffs

- (26) The primary form of support which eligible CHP installations receive for electricity generation under the notified measure comes in the form of one of two 'basic tariffs'. Eligible CHP installations sell the electricity generated on the market – receiving the prevailing market price at the time from the market and the basic tariff from the Czech Electricity and Gas Market Operator - OTE a.s ('OTE'). Depending on the installed capacity of the unit, either Basic Tariff I or Basic Tariff II will apply. These will apply as follows:

Basic Tariff I                      Eligible CHP installations of 5MW or less; or

Basic Tariff II                      Eligible CHP installations of more than 5MW.

- (27) The basic tariffs are meant to cover the difference between the levelised costs of the electricity produced ('LCOE') and the market price, in an effort to make CHP installations a viable investment in the Czech Republic.
- (28) The LCOEs are calculated on the basis of estimated capital expenditure, operating costs, thermal and electro efficiency, and the annual utilisation rates of model high-efficiency CHP installations. The data used to inform these assumptions are set out in Table 4. The basic tariffs are also adjusted to reflect evolving fuel prices and information on the market price of electricity.
- (29) The basic tariffs, as well as the supplementary tariffs (see Section 2.4.1.2), for natural gas based CHP installations are set out below in Table 4.<sup>9</sup>

		Electricity price	Green Bonuses (CZK/MWh) <sup>10</sup>						
			Total (BT1+ST1+Electricity Price)			Basic Tariff			Supplementary Tariff I
			3000	4400	8400	3000	4400	8400	-
2013	CHP up to 200 kW	1350	3357	2890	2020	2007	1540	670	0
2013	200 kW - 1 MW	1400	2998	2588	1990	1588	1188	590	0
2013	1 MW - 5 MW	1400	2621	2288	1900	1221	888	500	0
2013	Above 5 MW	1200	NA	NA	1400	NA	NA	200	0
2014	CHP up to 200 kW	1150	3214	2748	1825	1609	1143	220	455
2014	200 kW - 1 MW	1150	2753	2353	1745	1148	748	140	455
2014	1 MW - 5 MW	1150	2400	2067	1650	795	462	45	455
2014	Above 5 MW	1200	NA	NA	1400	NA	NA	200	0
2015	CHP up to 200 kW	1120	3214	2748	1825	1639	1173	250	455
2015	200 kW - 1 MW	1120	2753	2353	1745	1178	778	170	455
2015	1 MW - 5 MW	1120	2400	2067	1650	825	492	75	455
2015	Above 5 MW	1200	NA	NA	1400	NA	NA	200	0

<sup>9</sup> The majority of installations in receipt of the Basic Tariff are gas-fired CHP installations. However, a lower tariff is available to certain installations depending on their technology type. These are set out in Table 6 below.

<sup>10</sup> Green bonuses for installations with operating regimes of 3000, 4400 and 8400 hours per annum.

Table 4. Electricity market prices vs green bonuses for electricity from natural gas fired CHP. Source: Czech authorities.

- (30) Table 5 below shows the levelised costs of electricity, calculated using the methodology described above in paragraph (28), for all natural gas based CHP installations. When compared to the total revenues from both electricity prices and the support tariffs it is clear that in all instances the LCOE is not exceeded.

		LCOE CZK/MWh		
		3000 hours per annum	4400 hours per annum	8400 hours per annum
2013	CHP up to 200 kW	[...]	[...]	[...]
2013	200 kW - 1 MW	[...]	[...]	[...]
2013	1 MW - 5 MW	[...]	[...]	[...]
2013	Above 5 MW	[...]	[...]	[...]
2014	CHP up to 200 kW	[...]	[...]	[...]
2014	200 kW - 1 MW	[...]	[...]	[...]
2014	1 MW - 5 MW	[...]	[...]	[...]
2014	Above 5 MW	[...]	[...]	[...]
2015	CHP up to 200 kW	[...]	[...]	[...]
2015	200 kW - 1 MW	[...]	[...]	[...]
2015	1 MW - 5 MW	[...]	[...]	[...]
2015	Above 5 MW	[...]	[...]	[...]

Table 5. LCOE data for natural gas fired CHP installations. Source: Czech authorities.

- (31) For CHP installations with installed capacity above 5 MW, the basic tariff also takes the primary energy saving which the installation represents as well as its operating efficiency into account. These are set out below in Table 6. Installations in receipt of these tariffs may also be eligible to receive Supplementary Tariff II described at recital (38) below.

Basic Tariff [CZK/MWh]		
Saving primary energy	Efficiency %	Green Bonus (CZK/MWh)
>10<15	-	45
>15	<45	60
>15	45-75	140
>15	>75	200

*Table 6. Basic Tariff for coal and biomass incineration. Source: Czech authorities.*

- (32) Once calculated by the ERO, the basic tariff levels are published as Price Decisions in the Energy Regulation Gazette. Once published, the tariffs then remain valid for one year until the ERO publishes the next annual price decision.

#### 2.4.1.2. Supplementary tariffs

- (33) There are two supplementary tariffs which are payable to certain installations in addition to their basic tariff based on the type of fuel which they combust. Eligible beneficiaries may apply for either supplementary tariff (but not both) in addition to their basic tariff. The two supplementary tariffs are:

Supplementary Tariff I      CHP installations co-firing natural gas with a renewable fuel source or using a secondary source or RES; and

Supplementary Tariff II      Coal-fired CHP installations co-firing with a renewable fuel source.

- (34) The purpose of the supplementary tariffs is to provide an extra incentive for CHP producers to utilise more renewable fuels by neutralising some of the extra cost impacts which are associated with the use of those resources. The supplementary tariffs are also designed to promote the efficient production of environmentally friendly CHP energy by providing the supplementary support to CHP producers electing to also use renewable fuels.
- (35) Without the supplementary tariffs, the Czech authorities have pointed out that there would be no incentive for CHP installation operators to utilise renewable fuels because they would be in receipt of the same support levels as CHP installations which do not. Considering the extra costs associated with co-firing, it was felt that a supplementary tariff targeted at neutralising some of these extra costs would be an appropriate mechanism to address this disincentive.
- (36) Supplementary Tariff I for natural gas-fired CHP installations entitled to such support is set out above in Table 4.
- (37) The other categories of technology which may be eligible to receive Supplementary Tariff I are set out below in Table 7. These technologies fall into two grounds – RES and 'secondary sources' i.e. non-RES technologies. The Commission notes that where an installation is entirely RES-based then that installation may also be eligible for support to electricity from RES under another operating aid scheme to electricity generation from such technologies in the Czech Republic. Furthermore, the Commission notes that in the case of mining gas and municipal waste installations, operators may also apply for a 'secondary source' support payment. This regime has been notified to the Commission and remains under assessment. The scope of the approval conferred by this decision relates only to the tariffs described herein. All installations in receipt of aid under the notified measure and the secondary sources regime described above will be subject to the individual monitoring mechanism described in recital (63) below.

Category	Electricity price (CZK/MWh)	(CZK/MWh)
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			Basic Tariff I	Supplementary Tariff I
2013	biomass combustion	1060	45	100
2013	biomass gasification	1060	45	455
2013	biogas	1060	45	455
2014	biomass combustion	850	45	455
2014	biomass gasification	850	45	755
2014	biogas - new source	850	45	455
2014	biogas - new plant	850	45	900
2014	mining gas	930	45	455
2015	biomass combustion	850	45	455
2015	biomass gasification	850	45	755
2015	biogas - new source	850	45	900
2015	biogas - new plant	850	45	900
2015	mining gas	930	45	455

Table 7. Green bonuses for RES and secondary sources combustion. Source: Czech authorities.

- (38) Supplementary Tariff II is exclusively available to coal burning CHP installations which co-fire with RES. The level of the supplementary tariffs for the sub-categories of co-firing coal installations are set out below in Table 8.

Supported type of energy	Category of biomass and type of co-incineration process	Supplementary tariff II		
		2013	2014	2015
Co-incineration of biomass and non-renewable resource	S1	670	940	940
	S2	450	520	520
	P1	670	940	940
	P2	450	520	520

Table 8. Supplementary Tariff II.

- (39) Supplementary Tariff II was designed to incentivise co-firing within CHP installations; however, domestic legislative changes in the Czech Republic in 2016 have since decreed that the co-firing of biomass is only allowed in CHP installations. As such there was no longer a need to motivate co-firing within CHP specifically so the tariff was cancelled and has not been paid since that change was effected.

#### 2.4.2. Green bonus for RES heat

- (40) Aid to heat from RES is intended to ensure some support for the increased cost of RES fuels as compared to fossil fuels.
- (41) The green bonus is set at CZK 50/GJ. This same amount is subsequently specified in the annual ERO price decision, although it does not change annually in the same way as the green bonus for electricity, described in recital (32) above. The support is claimed for each GJ of heat supplied to the heat distribution system. CZK 50/GJ was

set as the level of support based upon analysis of the difference in costs between more expensive biomass fuels and higher geothermal energy production costs on the one hand and cheaper coal on the other hand. Co-firing installations are not eligible for this form of support.

- (42) In the case of coal, the lower end of the fuel price range is occupied by lower quality lignite, which would have lower heat values, higher ash content and which needs to be transported over a relatively short distance to reach its destination for combustion. The upper end of the fuel price range is occupied by higher quality lignite with a higher calorific value, lower ash content and additional higher transport costs.
- (43) The Czech authorities have explained that CZK 50/GJ represents the difference between the average coal price and the market price for biomass in the Czech Republic. However, the Czech Republic has also acknowledged that such prices are vulnerable to market changes and so has agreed to the commitment set out in recital (66) below to monitor fuel prices and adjust the quantum of the green bonus for RES heat as necessary to ensure that it does not exceed the difference between fossil fuel and biomass prices (geothermal energy).
- (44) In cognisance of the variability of fuel prices the Commission notes that the Czech Republic has expressed an intention to move from this fixed premium for RES heat to a variable one, more reflective of market changes. The Czech authorities expect to make this switch during 2019. If a new variable premium is introduced, the Czech authorities commit that the amount of the variable premium will not exceed the difference between the average coal price and the market price for the RES fuel in the Czech Republic.
- (45) According to the provisions of the Energy Act No. 458/2000 Coll., all electricity producers – including beneficiaries of all types of support to CHP electricity under the notified measure – bear general balancing responsibilities as participants in the market. Electricity generators can choose to bear their balancing responsibilities themselves or pay a third party to do so for them.

## **2.5. Duration of support**

- (46) The notified measure covers high-efficiency CHP installations which entered the scheme between 1 January 2013 and 31 December 2015. No new high-efficiency CHP installations have or will be entered into the scheme outside of this timescale.
- (47) For RES heat installations, the notified measure entered into force on 1 January 2013 and applies to non-depreciated RES heat installations commissioned by 31 December 2020.
- (48) The Czech legislation does not specify any time period during which the CHP or RES heat installations will be eligible to receive the aid. However, the Czech authorities have committed that a time period will be introduced in the Czech legislation to limit the support for both CHP and RES heat installations, and the beneficiaries of such aid will thus not be eligible for support after their installations have been fully depreciated in accordance with normal accounting rules in the Czech Republic.

- (49) In the case of support for heat from biomass, if the Czech authorities wish to provide aid to depreciated plants under paragraphs (132) to (134) of the EEAG 2014, a new support scheme stipulating the rules for such aid to depreciated plants will be notified by the Czech authorities to the Commission. No aid can be granted to depreciated plants under the support scheme approved by this decision.

## **2.6. Granting authority**

- (50) The aid is granted by the OTE. OTE is a State owned joint-stock company performing the obligations and duties of the market operator, as stipulated by Act No. 458/2000 Coll., - the Energy Act. OTE acts as a clearing centre which operates the entire system of state support for electricity and heat including the notified measure.
- (51) OTE administers the registration data system for the purpose of the notified measure including, for instance, information about the identification of beneficiaries, sources of energy production, form of the support (and any changes, including changes of the green bonus tariff). The Czech authorities have explained that OTE does not enter into bilateral contractual relationships with energy producers and that this means that claims for support originate directly from the Act No 165/2012 Coll., on promoted energy sources and amending certain laws.
- (52) It is the ERO, however, which determines the level of support for electricity and heat via its annual price decisions, as described above in recital (10).

## **2.7. Source of financing**

- (53) The notified measure is financed in part through a special levy imposed on customers of transmission and distribution electricity services and partly through the general State budget.
- (54) The levy in question was previously based on a charge per MW of electricity consumed in the Czech Republic levied by transmission and distribution system operators under law. In Commission Decision SA.35177 (2014/NN) *Promotion of electricity production from renewable energy sources*, the Commission expressed concerns that such a financing model could constitute a potential infringement of Articles 30 and/or 110 of the TFEU.<sup>11</sup> Accordingly, the Czech authorities committed to amending the manner in which the levy is collected to address this concern.
- (55) A new system was introduced from 1 January 2016 for determining the levy due from consumers, which is independent of the level of consumption but instead based on a single fixed payment depending on connection size.
- (56) Payments to beneficiaries under the notified measure are made on a monthly basis for the annual validity period of the green bonuses.

## **2.8. Budget**

- (57) The total estimated budget for support to electricity from CHP is CZK 8,400 million.

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<sup>11</sup> See recitals (71) – (72) of Commission Decision SA.35177 (2014/NN) *Promotion of electricity production from renewable energy sources*, OJ C 280, 22.08.2014, p.28-29.

- (58) The total estimated budget for support to RES heat is CZK 4,400 million.

## **2.9. Specific commitments by the Czech authorities**

### *2.9.1. Monitoring mechanism to address any potential overcompensation*

- (59) Beneficiaries in receipt of support under the notified measure were not previously prevented from also applying for investment aid and/or other operating aid and so could cumulate support under the notified measure with other forms of aid in some cases. The Czech authorities have acknowledged that the notified measure does not incorporate any mechanism providing for the adjustment of the support under the notified measure where such cumulation has occurred. As such, the Czech authorities have agreed to the monitoring commitment outlined below.
- (60) The Czech authorities have committed to introduce, in case of aid for electricity from CHP, a review mechanism for the notified measure by way of legislative amendment. The purpose of the review mechanism is to eliminate any risk of overcompensation that may result from the cumulation of aid or overestimation of any of the cost elements factored into the support level calculations. This review of the support will be carried out no later than 10 years after the commissioning of installations benefitting from support under the notified measure.
- (61) The Czech authorities in case of aid for electricity from CHP will monitor the overall level of support which installations have received under the notified measure. In any case, where by virtue of decreased production costs and/or a combination of investment and other operating aid with the aid granted under the notified measure, a beneficiary is in receipt of overall revenues which would result in a return above the post-tax target rate of 6.3 % deemed reasonable by the Czech authorities and the Commission, the Czech authorities will adopt the below measures to ensure any overcompensation is avoided and, where necessary, recouped.
- (62) In any such case of overcompensation the Czech authorities will, in case of aid for electricity from CHP, alternatively: reduce the level of future support, limit the period during which the support is paid out, or, where necessary, recover the amounts of aid which have led to such overcompensation.
- (63) This review of support will be carried out at the level of individual installations in cases where (i) aid under the notified measure has been cumulated with investment aid or other types of operating aid and (ii) aid was granted to CHP installations of more than 5MW. In all other cases, the review will be carried out on the basis of a representative sample of the different categories of installations to ensure beneficiaries' costs are properly reflected.
- (64) All installations will in principle therefore be subject to either individual or sample-based review with the exception of small projects to which the total volume of support does not exceed the *de minimis* threshold set by Commission Regulation No 1407/2013.<sup>12</sup>

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<sup>12</sup> Commission Regulation No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (OJ L 352, 24.12.2013, p. 1).

- (65) As outlined above at recitals (40) and (41), the Commission notes that support to RES heat installations is designed to cover only the difference between renewable and fossil fuel costs. For new RES heat installations entering the scheme from 1 January 2016 the Commission notes that the Czech authorities have confirmed that the support will continue to cover only one type of eligible costs – namely, fuel costs – and that no other aid is available, or will be made available, to these installations in respect of those eligible costs.
- (66) In this respect the Czech authorities have committed to monitor both renewable and fossil fuel prices for RES heat producing installations eligible for support under the notified measure at least annually, and have undertaken to adjust the quantum of support available to RES heat installations where necessary to ensure that such support never exceeds the difference between renewable and fossil fuel prices for such installations.

*2.9.2. Remedy to address any potential infringement of Articles 30 and/or 110 TFEU*

- (67) As described in Section 2.7 above, the measure is partly financed through a special levy on electricity consumers. Until the switch to a connection-based levy model on 1 January 2016, this levy was placed on all electricity consumed in the Czech Republic – whether domestic or imported.
- (68) The notified measure allowed for aid to CHP producers of electricity from the 1 January 2013. CHP producers outside the Czech Republic who exported electricity for consumption in the Czech Republic would have had the special levy placed on their electricity but could not benefit from the notified measure. As outlined at recital (54) above, the Commission has previously raised concerns that this financing model could involve potential infringement of Articles 30 and/or 110 TFEU.
- (69) To remedy any potential infringement of Articles 30 and/or 110 TFEU in the period 1 January 2013 until 1 January 2016, i.e. from the inception of the scheme's support for CHP until the introduction of the connection-based levy system described in recital (55) above, the Czech authorities have committed to invest an amount – which is representative of the total quantum of levies placed on imported electricity from CHP during this period – in interconnection capacity.
- (70) To determine the amount of CHP electricity which was imported into the Czech Republic during this period the Czech Republic has considered the quantum of total electricity imported from countries exporting electricity to the Czech Republic during this period and multiplied that total by the actual share of electricity generation from CHP in those countries. That figure is then multiplied by the levy applicable at the time to express the total amount levied on CHP importers during this period.
- (71) The supporting figures for this calculation are set out in Table 9, below:

	Year		2013	2014	2015**	Total
	Unit					
<b>Electricity imported into Czech Republic</b>						
<i>Austria</i>	MWh		0	265 000	41 000	306 000
<i>Poland</i>	MWh		7 649 000	7 688 000	9 765 000	25 102 000
<i>Germany</i>	MWh		963 000	3 830 000	6 267 000	11 060 000
<i>Slovakia</i>	MWh		0	59 000	73 000	132 000

	Year	2013	2014	2015**	Total
	Unit				
<b>Total</b>	MWh	8 612 000	11 842 000	16 146 000	36 600 000
<b>Share of electricity generation from CHP</b>					
<i>Austria</i>	%	14.4	13.00	13.00	x
<i>Poland</i>	%	15.9	15.1	15.1	x
<i>Germany</i>	%	12.4	11.9	11.9	x
<i>Slovakia*</i>	%	10.5	10.5	10.5	x
<b>Estimation of electricity from CHP imported into Czech Republic</b>					
<i>Austria</i>	MWh	0	34 450	5 330	39 780
<i>Poland</i>	MWh	1 216 191	1 160 888	1 474 515	3 851 594
<i>Germany</i>	MWh	119 412	455 770	745 773	1 320 955
<i>Slovakia</i>	MWh	0	6 195	7 665	13 860
<b>Total</b>	MWh	1 335 603	1 657 303	2 233 283	5 226 189
Amount of the fee to support energy sources in the regulated electricity price	CZK/MWh	370	419	583	x
Total costs of the fee that might be imposed on imported electricity from CHP	CZK	494 173 110	694 409 957	1 302 003 989	2 490 587 056

\*No values are listed; the EU average is therefore used.

\*\*Values for 2015 are not available; 2014 values were therefore used.

*Table 9. Electricity Imports and CHP component. Source: Czech authorities*

- (72) The total amount equals CZK 2 490 587 056. This amount will be invested in interconnection projects in the Czech Republic.
- (73) The list of projects to which these funds will be dedicated is attached to this decision as Annex 1.

### *2.9.3. Miscellaneous commitments by the Czech Republic*

- (74) As well as the provisions that will be made under the review mechanism outlined at Section 2.9.1 above, the Czech authorities also commit to suspend the payment of any aid under the notified measure to any undertaking that has benefited from earlier unlawful aid declared incompatible by a Commission Decision, until that undertaking has reimbursed or paid into a blocked account the total amount of unlawful and incompatible aid and the corresponding recovery interest.
- (75) The Czech authorities also agree to comply with the transparency requirements in Section 3.2.7 of the EEAG 2014.

## **3. ASSESSMENT OF THE MEASURE**

### **3.1. Presence of aid**

- (76) Article 107(1) TFEU provides that “*any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods, shall, in so far as it affects trade between Member States, be incompatible with the common market*”.

- (77) Support under the notified measure is granted directly from the State budget of the Czech Republic and through the collection of the special levy, i.e. by means of financial resources which are under the control of the State authorities.
- (78) The support amounts to an economic advantage for the beneficiaries of the scheme, which they would not obtain under normal market conditions. The notified measure only benefits producers of electricity from CHP and heat from RES installations and is therefore selective in nature.
- (79) The granting of aid to the Czech CHP installation and RES heat producers eligible under the notified measure strengthens their respective positions on the relevant markets *vis-à-vis* other electricity and heat producers, including those from other Member States. As there is cross-border trade of electricity, the measure affects trading and competition conditions between Member States.
- (80) The Commission therefore concludes that the notified measure involves State aid within the meaning of Article 107(1) TFEU.

### **3.2. Legality**

- (81) By implementing the notified measure on 1 January 2013, the Czech authorities have put the aid measure into effect before a final Commission decision on its compatibility was forthcoming. The notified measure was therefore illegal aid from the date of its granting as it was implemented in breach of the Czech Republic's stand-still obligation under Article 108(3) TFEU.

### **3.3. Compatibility**

- (82) Under paragraph 248 of the EEAG 2014 unlawful environmental aid or energy aid will be assessed in accordance with the rules in force on the date on which the aid was granted. The notified measure was introduced in 2013. The aid shall therefore be assessed in light of the *Community Guidelines on State Aid for Environmental Protection 2008 – 2014* ('EAG 2008')<sup>13</sup> in force at that time in respect of all installations which received confirmation of their entitlement to support under the scheme between 1 January 2013 and 31 June 2014.
- (83) For installations receiving confirmation of their entitlement to support from 1 July 2014, the date upon which the EEAG 2014 entered into force (per paragraph 246 thereof), the Commission will assess the compatibility of the aid to beneficiaries during this time period with the EEAG 2014.

#### *3.3.1. Compatibility with EAG 2008: General Conditions*

- (84) The notified measure concerns operating aid for cogeneration and operating aid for energy from RES. The Commission will assess the support to CHP under Section 3.1.7.2 of the EAG 2008 and the RES heat support under Section 3.1.6.2 of the EAG 2008.
- (85) Under point 112 of the EAG 2008, operating aid for CHP should only be provided to installations which satisfy the definition of high-efficiency cogeneration set out in

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<sup>13</sup> OJ C 82, 01.04.2008.

point 70(11) of the EAG 2008. As outlined in recital (12) above, only high-efficiency CHP installations meeting this standard are eligible for support under the notified measure.

- (86) In the case of operating aid for CHP installations, point 119 of the EAG 2008 further provides that aid may be granted in accordance with the rules for operating aid to renewable energy set out in Section 3.1.6.2 of the EAG 2008 to undertakings – under point 119(a) – “*distributing electric heat and power to the public where the costs of producing such electric power or heat exceed its market price*”. As illustrated by Tables 4 and 5 above, the costs of producing CHP electricity in the Czech Republic exceed the market prices for that electricity.
- (87) Point 119(a) of the EAG 2008 also provides that the decision as to whether such aid is necessary will take account of the costs and revenue resulting from the production and sale of the electric power or heat. As explained above at recital (38), revenues from heat were factored into the production cost assumptions for both the basic and supplementary tariffs. Similarly, the tariffs are designed as top-ups to the market price for electricity, which represents the revenues from the sale of the electric power which beneficiaries are likely to receive. The Commission therefore concludes that revenues from heat and electricity have been properly taken account of in accordance with point 119(a) of the EAG 2008.
- (88) According to point 27 of the EAG 2008, State aid for environmental protection must result in the recipient of the aid changing its behaviour so that the level of environmental protection will be higher than if the aid had not been granted. In respect of both CHP and RES heat installations, the Czech Republic has explained that in all cases the LCOE (and in case of RES heat, the costs for renewable fuel) for eligible installations exceeds the market price. Without support, the installations would not be deployed as they would not be economically viable. The tariff therefore induces the beneficiaries to utilise RES over more polluting conventional fuels.
- (89) The Commission notes that the notified measure entered into force on 1 January 2013 but the implementing instruments for the RES heat support defined the eligibility criteria for RES heat as incorporating all installations irrespective of the date of their commissioning (i.e. also installations commissioned prior to 2013), provided these are not yet fully depreciated. As already explained in recital (16), the inclusion of these installations was a consequence of sustained increases in the market price of biomass fuels and of geothermal energy production costs.
- (90) The aim of this inclusion was to ensure that these facilities were not forced to cease operation or switch to the combustion of cheaper fossil fuels. In addition, the introduction of a support to mitigate these price increases was already part of the Programme Declaration of the Government of the Czech Republic of 17 January 2007 (see recital (17)). This declaration gave the operators of these installations the necessary assurance concerning the future economic sustainability of the RES projects. The Commission therefore considers that the aid measure resulted in the recipients of aid changing their behaviour so that the level of environmental protection in the Czech Republic has improved compared to a situation in which the aid would not have been granted.
- (91) In terms of whether the operating aid to CHP in the present case is granted in accordance with the rules for operating aid to renewable energy in Section 3.1.6.2 of

the EAG 2008, point 109(a) provides that aid may be granted to cover the difference between the costs of producing energy and the market price of the form of energy concerned.

- (92) As outlined at recital (27) above, the design of the basic tariff was to bridge the difference between the costs of producing energy and the market price. Furthermore, as outlined at recital (28), evolving costs data on operating costs and market prices is fed into the annual update of the tariff to ensure that it continues to reflect this differential. For installations which are using renewable or secondary fuel sources, and so are entitled to a supplementary tariff, the Commission notes that its quantum is based purely on the extra costs associated with the fuel or technology source which it is utilising. The Commission is therefore satisfied that the design of the support is targeted at covering the difference between the costs of producing energy and the market price of that form of energy.
- (93) The Commission also recognises, however, that in certain circumstances – particularly where aid to an installation has been cumulated with other forms of operating aid or investment aid – the net total amount of support may exceed the difference between the costs of producing energy and the market price of the form of energy concerned. In such cases, the Commission is satisfied, however, that the monitoring mechanism to which the Czech Republic has committed (Section 2.9.1 above) is capable of remedying any such risk of overcompensation as it is designed and so ensuring that the tenets of point 109(a) of the EAG 2008 are respected.
- (94) This support may be granted until the plant has been fully depreciated according to normal accounting rules under point 109(a) of the EAG 2008. As outlined at recital (48) above, the Czech Republic has committed to legislate to ensure that installations will only be granted support for a term of 15 years. This corresponds with the useful lifetime of the installations eligible for support under this scheme and so satisfies this aspect of point 109(a).
- (95) Point 109(a) also prescribes that the aid in question may cover a normal return on capital. As outlined above in recital (38), the target IRR which forms the basis for CHP support under the notified measure is a pre-tax rate of 6.33 %. The Commission notes per the commitment in Section 2.9.1 above, that this will be the reference rate used as the benchmark to assess any possible overcompensation in cases of cumulation. The Commission considers that this is a normal rate of return for installations of this kind in the Czech Republic and so considers point 109(a) satisfied.
- (96) Point 109(b) of the EAG 2008 directs that any investment aid granted to the undertakings in question must be deducted from the production costs when determining the amount of the operating aid. As noted above in recital (59), provision to deduct cumulated investment aid was not originally featured into the tariff calculation. However, the Commission is satisfied that the commitments of the Czech Republic outlined in Section 2.9.1 above to address this issue are sufficient to ensure that the requirement is properly satisfied.
- (97) The support in the form of green bonuses for heat is granted for heat production from RES as defined in point 70(5) of the EAG 2008. Therefore, the Commission

considers that the aid is granted for the production of renewable energy within the meaning of the EAG 2008.

- (98) In accordance with points 107 and 109(a) of the EAG 2008, operating aid to RES installations may be granted to compensate the difference between the costs of producing energy from RES and the market price of the energy concerned. As outlined in Section 2.4.2 above, the RES heat support is designed to cover some of the increased costs of producing energy from RES as compared with energy from fossil fuels by negating the increased fuel costs for RES producers. The RES heat green bonus therefore goes some way to compensating the difference between the costs of producing heat from RES and the market price.
- (99) In light of the foregoing, the Commission considers that the Czech authorities have demonstrated that, once the appropriate modifications of the relevant legislative provisions – as described above in Section 2.9.1 – are enacted, the aid under assessment will be in line with the provisions of the EAG 2008. The Commission therefore concludes that the notified measure is compatible with the internal market on the basis of Article 107(3)(c) TFEU.

### *3.3.2. Compatibility with the EEAG 2014: General Conditions*

- (100) The provisions of the EEAG 2014 came into effect on 1 July 2014. Therefore for all CHP installations which received confirmation of their right to receive support after that date, the EEAG 2014 will form the basis of the notified measure's assessment.

#### *3.3.2.1. Objective of common interest*

- (101) Paragraph (27)(a) of the EEAG 2014 established that aid measures must contribute to a well-defined objective of common interest in accordance with Section 3.2.1 of the EEAG 2014. As outlined in recitals (7) and (8) above, the aim of the notified measure is environmental protection.
- (102) The support to CHP installations is aimed at incentivising production of electricity in high-efficiency heat and power cogeneration installations. High-efficiency CHP has been recognised by the Energy efficiency Directive as having significant potential for saving primary energy and thus contributing to energy efficiency and to CO<sub>2</sub> reduction efforts.
- (103) The support to RES heat is designed to incentivise the utilisation of renewable over fossil fuel sources and so enables attainment of the Czech Republic's renewable energy targets set by the EU as part of its 2020 strategy, outlined above in recital (8).
- (104) The Commission thus considers that the notified scheme is aimed at an objective of common interest in accordance with Article 107(3) TFEU.

#### *3.3.2.2. Need for State intervention*

- (105) Paragraph (27)(b) of the EEAG 2014 provides that State aid may only be deemed compatible with the internal market if the Member State has demonstrated that there is a need for State intervention, and in particular that the aid is necessary to remedy a market failure that would otherwise go unaddressed.

- (106) In the case of CHP installations accredited between 1 July 2014 and 31 December 2015 the Commission notes that energy efficiency measures can be presumed to target negative externalities by creating individual incentives to attain environmental targets for energy efficiency and for the reduction of greenhouse gas emissions (see paragraphs (35) and (142) of the EEAG 2014). A residual market failure exists in the case of high-efficiency CHP in the Czech Republic because the LCOEs are higher than the market price for that electricity (see Tables 4 and 5 above), meaning there is no incentive in the market for investors to develop high-efficiency CHP installations without State intervention.
- (107) For RES heat installations accredited after 1 July 2014, the Commission notes that per paragraph (115) of the EEAG 2014 the Commission presumes that a residual market failure exists in the renewable energy sector, which can be addressed through aid to renewable energy production.

#### 3.3.2.3. Incentive effect

- (108) Paragraph (27)(d) of the EEAG 2014 provides that aid must have an incentive effect in accordance with Section 3.2.4 of the EEAG 2014 in order to be deemed compatible with the internal market. Per paragraph (49) of the EEAG 2014 an incentive effect is achieved if a beneficiary is induced to change its behaviour towards reaching the objective of common interest which the State aid measure pursues.
- (109) In respect of CHP installations, the Czech Republic has explained that in all cases the LCOE for eligible installations exceeds the market price. Without support, therefore, the installations would not be deployed as they would not be economically viable. In respect of the RES heat installations, as outlined above at Section 2.4.2, the tariff is specifically designed to negate some of the difference in costs between the use of a renewable fuel and a less expensive fossil fuel equivalent. The tariff therefore induces the beneficiaries to utilise RES over more polluting conventional fuels that they would otherwise be incentivised to use because of the costs differential in favour of fossil fuels.
- (110) In accordance with paragraph (50) of the EEAG 2014, the Commission considers that aid does not have an incentive effect where work on the installations has already started prior to the aid application by the beneficiary. The present assessment under the EEAG 2014 is limited to CHP and RES heat installations accredited after 1 July 2014 for the reasons outlined in recital (83). Installations upon which work had already started were not eligible for support during this period so paragraph (50) of the EEAG 2014 is satisfied. The Commission notes that the Czech Republic has confirmed that the provisions in paragraph (51) of the EEAG 2014 concerning the application form are also complied with. The Commission therefore concludes that the aid has an incentive effect.

#### 3.3.2.4. Appropriateness of the aid, proportionality and avoidance of undue distortion of competition

- (111) Paragraph (27)(c) of the EEAG 2014 stipulates that the proposed measure should be an appropriate policy instrument to address the objective of common interest being pursued in accordance with Section 3.2.3 of the EEAG 2014. The Commission will also verify compliance with those parts of Section 3.4 of the EEAG 2014 which are relevant to the determination of appropriateness.

- (112) In line with paragraph (145) of the EEAG 2014, State aid may be considered an appropriate instrument to finance energy efficiency measures, independent of the form in which it is granted. Top-up tariffs of the type paid to CHP installations under the notified measure are appropriate aid instruments to compensate CHP installations for the higher production costs of electricity from CHP, as they target the additional cost elements not covered by the market price.
- (113) In terms of aid to energy from RES, such as the support to RES heat under the notified measure, the Commission presumes the appropriateness and the limited distortive effects of such aid under paragraph (116) of the EEAG 2014 on the grounds that all other applicable conditions have been met.
- (114) Paragraph (27)(e) of the EEAG 2014 stipulates that for aid to be proportionate it should be limited to the minimum amount necessary to achieve the environmental protection objective which the State aid pursues (per paragraph (69) of the EEAG 2014). Paragraph (27)(f) of the EEAG 2014 requires that the negative effects of aid are sufficiently limited, so that the overall balance of the measure is positive in accordance with Section 3.2.6 of the EEAG 2014.
- (115) For CHP installations, Section 3.4 of the EEAG 2014 sets out the conditions under which operating aid to CHP can be found to be proportionate and not unduly distortive to competition. For aid to energy from renewable sources other than electricity, such as RES heat, Section 3.3.2.2 of the EEAG 2014 is applicable. The compatibility of the respective support schemes with each of these is considered in turn below in Sections 3.3.2.6 and 3.3.2.7.

#### 3.3.2.5. Transparency

- (116) Paragraph (27)(g) of the EEAG 2014 requires that State aid is transparent in accordance with Section 3.2.7 of the EEAG 2014. The Czech authorities have committed to comply with their transparency obligations under the EEAG 2014 as outlined in recital (75) above.

#### 3.3.2.6. Support to CHP electricity: Compatibility with Section 3.4 of the EEAG 2014

- (117) As mentioned at recital (115) above, in order to be deemed proportionate and not unduly distortive of competition, aid to CHP installations must comply with Section 3.4 of the EEAG 2014. The notified measure concerning support to CHP consists of operating aid for the production of electricity in highly energy-efficiency CHP installations so paragraph (151) of the EEAG 2014 is applicable to its assessment.
- (118) Per paragraph (151)(a) of the EEAG 2014, aid to CHP may be granted only to CHP installations generating electric power and heat for distribution to the public where the costs of producing such electricity exceed the market price. This point, analysed already in the context of the EAG 2008 at recital (88) above, is satisfied because the LCOE of CHP installations eligible for support under the scheme exceeds the market price, as demonstrated in Tables 4 and 5 above.
- (119) Paragraph (151) of the EEAG 2014 provides that operating aid to CHP may be granted on the basis of the conditions applying to the grant of operating aid for electricity from RES established in Section 3.3.2.1 of the EEAG 2014.

- (120) Paragraph (124) of Section 3.3.2.1 of the EEAG 2014 requires that aid granted from 1 January 2016 complies with a set of cumulative conditions in order to be deemed compatible with the internal market. Those conditions are therefore not applicable to the CHP installations supported under the notified measure as only installations commissioned before 31 December 2015 are eligible for support (see recital (13) above).
- (121) Paragraph (126) of the EEAG 2014 sets the requirements for a competitive bidding process from 1 January 2017. Again, given installations commissioned after 31 December 2015 are ineligible under the notified CHP measure, paragraph (126) is not applicable in the present case.
- (122) Paragraph (129) of the EEAG 2014 requires that aid is only granted until the plant has been fully depreciated in accordance with normal accounting rules. As described in recital (48) above, this is the case under the notified measure.
- (123) Paragraph (129) of the EEAG 2014 also stipulates that any investment previously received must be deducted from operating aid. Whilst the original design of the tariffs did not ensure that this was the case, the Commission is satisfied – based on the commitment of the Czech authorities described in Section 2.9.2 above – that the Czech authorities will verify each individual case of aid granted to CHP installations to ensure that no overcompensation has taken place, taking into account the full amounts of any investment aid granted to beneficiaries. Paragraph (129) of the EEAG 2014 will therefore be satisfied in this regard once the provisions of that review mechanism have been implemented.
- (124) The Commission therefore concludes that the CHP support measure complies with the EEAG 2014.

#### 3.3.2.7. Support to RES Heat: Compatibility with Section 3.3 of the EEAG 2014

- (125) Aid for energy from renewable sources other than electricity is assessed in accordance with Section 3.3.2.2 of the EEAG 2014, paragraph (131)(a) of which stipulates that aid per unit of energy may not exceed the difference between the total levelised costs of producing the relevant energy form and the market price for that energy. In this case, only a part of the levelised costs are compensated, namely the difference between the biomass fuel costs and fossil fuel costs as can be seen from Table 4 above. Given that only this isolated production cost is compensated, the Commission is satisfied, as the green bonus for RES heat will not exceed the difference between the total levelised costs of producing RES heat and the market price.
- (126) Paragraph (131)(b) of the EEAG 2014 provides that the aid may include a normal return on capital. The design of the green bonus to RES heat is not designed to provide any return on capital but merely to compensate for the difference between RES and fossil fuel costs without taking other production costs (including any returns) into account. Paragraph (131)(b) of the EEAG 2014 therefore does not apply.
- (127) Paragraph (131)(c) of the EEAG 2014 requires that production costs are updated regularly, and at least annually. The only costs relevant to the determination of the aid amount in the case of RES heat support are the RES fuel costs. In this regard, in

the context of the review mechanism to which the Czech Republic has committed for RES heat installations (see recital (66) above), fuel costs will be monitored annually and the green bonus updated accordingly if ever the difference between average biomass and fossil fuel costs falls below the level of the green bonus.

- (128) Paragraph (131)(d) of the EEAG 2014 requires that aid is only granted until the plant has been fully depreciated according to normal accounting rules. This is satisfied via the Czech authorities' commitment in recital (48) above.
- (129) The Commission therefore concludes that the RES measure complies with the EEAG 2014.

### *3.3.3. Compatibility with other Treaty provisions*

- (130) During the Commission's assessment of the notified measure, the Commission services expressed concerns that the financing mechanism of the notified measure in the period 1 January 2013 until 31 December 2015 – by means of a consumption-based levy – might infringe Article 30 TFEU which prohibits customs duties on imports and exports and changes having equivalent effect, or Article 110 TFEU which prohibits the imposition of taxes on imported products if this is in excess of the taxes borne by similar domestic products. If domestic electricity production is supported by aid that is financed through a charge on all electricity consumption (including the consumption of imported electricity), then the method of financing, which imposes a burden on imported electricity not benefitting from this financing, may have a discriminatory effect on imported electricity from CHP.
- (131) However, as set out in Section 2.9.2 above, the Czech Republic has committed to remedying any potential discrimination on imported CHP electricity by investing a compensatory amount in interconnection capacity with the aim of enabling an increase in cross-border flows in the European electricity market.
- (132) As of 1 January 2016 the levy was switched to a connection based system described in recital (55) above. This new system has been accepted in earlier Commission decisions as compatible with Articles 30 and 110 TFEU.<sup>14</sup>

## **4. AUTHENTIC LANGUAGE**

- (133) As mentioned under Section 1 of this decision, the Czech Republic has waived its right to have the decision adopted in Czech. The authentic language will therefore be English.

## **5. CONCLUSION**

- (134) The Commission regrets that the Czech Republic put the notified measure under assessment into effect before it had been notified and approved by the Commission in breach of Article 108(3) TFEU. However, it has decided, on the basis of the foregoing assessment, not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(c) TFEU.
- (135) The Commission reminds the Czech authorities that, in accordance with Article 108(3) TFEU, any plans to refinance, alter or change this aid measure have to be

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<sup>14</sup> See paragraph 72 of Commission Decision SA.35177 (2014/NN) Promotion of electricity production from renewable energy sources, OJ C 280, 22.08.2014.

notified to the Commission pursuant to the provisions of Commission Regulation (EC) No 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (now Article 108 TFEU).<sup>15</sup>

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site:

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<sup>15</sup> OJ L 140, 30.4.2004, p. 1.

Your request should be sent electronically to the following address:

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Directorate-General Competition  
State Aid Greffe  
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[Stateaidgreffe@ec.europa.eu](mailto:Stateaidgreffe@ec.europa.eu)

Yours faithfully  
For the Commission

Margrethe VESTAGER  
Member of the Commission

