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Subject: State Aid SA.52413 (2018/NN) – Greece
Reduced contribution to financing of support for electricity from
renewable sources (RES) and high-efficiency cogeneration (HECHP)
for energy-intensive users (EIUs)

Sir,

1. PROCEDURE

- (1) On 12 November 2018 the Greek authorities notified a modification of a non-notified scheme, which was already in place, providing for a reduced contribution to financing of support for electricity from renewable sources (RES) and high efficiency cogeneration (HECHP) for energy-intensive users (EIUs).
- (2) By letter dated 13 November 2018, the Commission informed the Greek authorities that it has decided to transfer the case to the register of unlawful aids (NN), as reductions in the contribution to financing of support for electricity from renewable sources (RES) and high-efficiency cogeneration (HECHP) were already granted to certain electricity consumers in the past.
- (3) The Commission examined the non-notified scheme together with the notified modification of reductions to EIUs, which will be introduced on 1 January 2019.
- (4) Through a complaint from an EU citizen received on 22 January 2014 and an identical complaint received on 22 September 2014 by the same citizen, jointly with another EU citizen (with complementary information received from the complainants in June, September, October, November and December 2014), the Commission was informed that Greece had implemented the non-notified aid scheme (case SA.38220 (2014/CP)). As the complaints corresponded to the aid

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measure notified by Greece on 12 November 2018, the Commission examined the complainant's argument in the framework of procedure SA.52413 (2018/NN) and informed the complainant thereof by letter of 16 November 2018. The Commission forwarded the complaint to the Greek authorities on 20 November 2014, which was given opportunity to react; its comments were received on 14 July 2015. The Commission services asked for additional information on 7 April 2016, 6 February 2017, 6 July 2017, 7 March and 9 July 2018. The Greek authorities provided additional information on 1 July 2016, 4 and 11 May, 18 September, 18 October, and 4 December 2017, 5 February, 26 February, 29 May and 6 August 2018, respectively. Several meetings were also organised in 2017 and 2018.

- (5) On 5 December 2018, the Greek authorities have waived their right under Article 342 TFEU in conjunction with Article 3 of Regulation (EEC) No 1/1958 to have the decision in procedure SA.52413 adopted in English and agreed that the decision be adopted and notified in English.

2. DETAILED DESCRIPTION OF THE MEASURE

2.1. The existing reduced contributions of the financing of RES and HECHP support

2.1.1. The financing of RES and HECHP support

- (6) In Greece, the support for electricity from RES and HECHP¹ is financed through various sources gathered in a "Special Account".
- (7) The so-called ETMEAR levy (special fee for the reduction of greenhouse gas emissions) imposed on consumers of electricity through their suppliers, is one of the inflow components of the Special Account. The ETMEAR levy is calculated and collected by the Independent Power Transmission Operator (IPTO) from suppliers and self-producers based on the consumption of the previous month, and transferred to the Special Account. The amount to be collected in the form of the ETMEAR levy is budgeted for the subsequent year based on estimates on the other inflows to the Special Account, so that the estimated outflows are covered.
- (8) The ETMEAR amounts to around EUR 900 million per year, which represents 45% of the inflows of the Special Account. The total inflow of the Special Account amounts to approximately EUR 2 billion annually.
- (9) The ETMEAR rate is determined on a yearly basis as a fixed amount per kWh of electricity. An annual maximum cap of the ETMEAR charge per consumption point, expressed in euros is also applied.
- (10) The Operator of the Electricity Market (DAPEEP, formerly known as LAGIE, 100% State owned), being the successor of the Hellenic Market Operator,

¹ The RES support scheme was approved by the Commission decision SA.44666 – New operating aid scheme for the production of electricity from RES and HECHP, of 16 November 2016, OJ C 83 of 13.03.2017. Recital 7 of that decision specifies that HECHP installations financed by ETMEAR comply with the criteria of high-efficiency cogeneration as defined in Directive 2012/27/EU (the Energy Efficiency Directive).

manages the Special Account in accordance with the provisions of Law 2773/1999 and Law 4001/2011. All RES and HECHP units in the interconnected system and on the non-interconnected islands are financed via the Special Account, respectively by DAPEEP and the Hellenic Electricity Distribution Network Operator (HEDNO). The Special Account has been exclusively created for covering the costs of production from RES and HECHP.

2.1.2. The evolution in the methodology for the allocation of the ETMEAR levy

- (11) The ETMEAR levy was introduced for the first time by Law No 2773/1999, which provided for the full recovery by the competent operator of the Special Account at the time (i.e. the Hellenic Market Operator) of the amounts for financing RES and HECHP producers. At the time, the levy was uniformly charged to all Greek consumers.
- (12) Law No 3175/2003 introduced the possibility of diversifying the allocation of the ETMEAR levy per customer category, with the intention of balancing the economic impacts of the levy between the various categories of consumers. Nevertheless, due to the small penetration of RES and HECHP in the market the possibility to differentiate between consumer categories was not used.
- (13) In addition, Law No 3175/2003 established an annual cap of EUR 600 000 on the ETMEAR levy that could be charged per consumption point. This cap was reviewed annually through a Decision of the Regulatory Authority for Energy and remained stable until 2011. Table 1 below shows the evolution of this cap as of 2011.

Table 1. Annual cap of the ETMEAR charge per consumption point

RAE Decision Number – Laws	Annual charge limit	Year of application
Dec. RAE 373 / 11.03.2011 (Government Gazette B 623 / 18.4.2011)	773.531 €	2011
Law No.4123 / 2013 (Government Gazette A 43 / 19.2.2013), Article 26, applied retroactively from 19.11.2012	1.000.000 €	2012-2013
Dec. RAE 85 / 26.02.2014 (Government Gazette B 745 / 26.03.2014)	991.000 €	2014
Dec. RAE 105 / 26.03.2015 (Government Gazette B 855 / 15.05.2015)	978.117 €	2015 - 2018

Source: Greek authorities

- (14) The Greek authorities indicated that the main objective of the diversification of the ETMEAR rates and the establishment of an annual cap is to ensure that electro-intensive users are not burdened by the ETMEAR to such a degree that it significantly impairs their competitiveness.
- (15) From 1 January 2011, the Ministerial Decision No 1 615 of 6 December 2010, in compliance with the Regulatory Authority for Energy ("RAE")'s opinion No 355 of 7 October 2010, introduced a differentiation on the ETMEAR levy based on consumer categories determined on the basis of the voltage level at which they were connected as well as the purpose of their electricity use (e.g. high voltage

for industrial use, medium voltage for craft/commercial and agricultural use, and low voltage for household, agricultural, other commercial use). The differentiated ETMEAR rates were based on allocation coefficients based on the total electricity costs per consumer category. As a result, the total ETMEAR amount per consumer was calculated as a percentage of the final total average charge for electricity per consumer category.

- (16) The Greek authorities explained that such allocation of the ETMEAR charge created a significant burden on the major industrial consumers of electricity in Greece, due to the growing penetration of RES entailing more costs to be covered by the Special Account and the consequent increase of the ETMEAR. Therefore, the RAE explored new methodologies to set coefficients per consumer categories and launched a public consultation, taking into account the systems in force in other Member States, as approved by the European Commission.²
- (17) Following the public consultation, the Decision of the Deputy Minister for the Environment, Energy and Climate Change No 290 of 8 January 2013 changed the methodology for the allocation of the different ETMEAR rates from the methodology, based on the total electricity costs per consumer, to a new methodology, based on the average charge for system and network usage per consumer category. For the first half of 2013, RAE decision no. 1/2013 combined the two methodologies and established the following list of consumer categories, which included self-generators:
 - Low voltage (LV) household use;
 - LV agricultural use;
 - Other LV uses;
 - Medium voltage (MV) agricultural use;
 - Other MV uses;
 - High voltage (HV);
 - Self-generators consumption.³
- (18) The new methodology was applied for the first time for the second half of 2013, by means of RAE Decision No 323/2013. Under the new methodology, the RAE established allocation coefficients for each of the new consumer categories and avoided differentiation within each of the consumer in categories. Once the allocation coefficients were established, any amount not recovered by a consumer category as a result of application of the annual cap (see recital (13) above) was charged to the remaining categories based on the same allocation coefficients for those remaining categories.
- (19) The numerical value of each coefficient used in the new methodology and the unit prices charged to consumers per MWh are determined by a decision of RAE in the 12th month of each year for the following calendar year, after a budget assessment of inflows and outflows of the Special Account,.

² In particular, Greece referred to the Austrian example, as approved by Commission Decision of 8 February 2012 in case SA.33384 (2011/N) – Austria, Green Electricity Act 2012, OJ C 156/2012.

³ Self-generators of specific RES technologies and of small capacity were exempted from the payment of ETMEAR for the part of self-generated energy pursuant to Article 53 of Law 4315/2014.

- (20) Ministerial Decision No 4 123 of 5 March 2014 further introduced a distinction between medium voltage consumers, based on their consumption. The Greek authorities explained that the category of medium voltage electricity consumers with a total annual consumption over 13 GWh per consumption point included large electricity intensive industrial facilities, for which the costs of the ETMEAR levy reflect a significant percentage of their total production costs and are, therefore, critical for the competitiveness of their products. The Greek authorities therefore considered that medium voltage consumers with an annual consumption over 13 GWh per consumption point should be treated as the high voltage consumers, in order to provide them with a percentage discount on the ETMEAR levy.
- (21) Table 2 provides an overview of the ETMEAR rates applied to the different consumer categories over time.

Table 2. ETMEAR rates per consumer category [€/MWh]

Consumer Category		Unit ETMEAR Charge €/MWh						
		2018	2017	2016	2015	2014***	2013**	2012*
High Voltage (HV)		2,47	2,51	2,41	2,23	2,23	3,55/1,79	2,96/4,48
Medium Voltage (MV)	>13GWh	2,47	2,51	2,48	2,31	2,31	7,76/8,87	5,35/7,17
	< 13GWh	8,60	9,76	10,12	12,77	12,77		
Agricultural MV		8,78	9,71	10,12	10,83	10,83	5,57/6,97	2,29/4,35
Agricultural LV		9,39	10,47	10,69	11,39	11,39	6,48/7,33	2,96/5,61
Residential LV		22,67	24,77	24,87	26,30	26,30	9,53/20,80	5,99/8,84
Other Uses LV		26,08	27,79	28,21	30,89	30,89	14,91/21,77	7,38/9,53
<i>*New charges from 08/2012</i> <i>**New charges from 07/2013 until 03/2014</i> <i>***New Charge from 04/2014</i>								

Source: Greek authorities

- (22) The Special Account covers both financing for support to RES and HECHP. Table 3 shows the share of ETMEAR levy allocated to the financing of HECHP installations in the period 2011-2017:

Table 3. HECHP share of the Special Account

YEAR	HECHP share
2017	2.05%
2016	2.49%
2015	3.51%
2014	3.62%
2013	3.50%
2012	2.4%
2011	3.5%

Source: Greek authorities

2.2. The adjustment plan

- (23) As expressed in Table 2, reduced ETMEAR rates have been granted in the past based on consumer categories. These categories differentiate consumers based on the voltage of their connection.
- (24) In its first letter sent on 14 July 2015, the Greek authorities have argued that these advantages flowing from the differentiated ETMEAR levy were not granted on a selective basis because the undertakings belonging to the various categories were not in a comparable factual and legal situation in the light of the objective pursued by the system.⁴ According to the Greek authorities, a uniform charge applied to all consumers would be excessive to electro-intensive consumers and would threaten their competitive position. The ETMEAR system was designed pursuant to the general principles of equal treatment and protection of economic freedom. In addition, the different levels of reduction resulted from the application of objective criteria in line with the internal logic of the system (*GIL Insurance*⁵).
- (25) However, the Greek authorities submitted an adjustment plan on 7 April 2016 to bring the reductions of the ETMEAR in line with the provisions in section 3.7.3 of the Guidelines on State aid for environmental protection and energy 2014-2020⁶ ("EEAG"). The adjustment plan provides for transitional rules for aid granted to reduce the burden related to funding support for RES until 31 December 2018.
- (26) The adjustment plan is based on the following minimum ETMEAR contributions in line with the EEAG:
- (a) the lowest contribution between 15% of the ETMEAR contribution and 0.5% of the GVA⁷, for undertakings operating in sectors listed in Annex 3 or 5 of the EEAG, with electro-intensity (calculated with respect to the GVA) above 20% (EEAG point 189);
 - (b) the lowest contribution between 15% of the ETMEAR contribution and 4% of the GVA, for undertakings operating in a sector listed in Annex 3 with an electro-intensity below 20% (EEAG point 189);
 - (c) 20% of ETMEAR contribution for undertakings which benefitted from reductions before 1 July 2014 but operating in sectors other than those listed in Annex 3 or 5 of the EEAG or operating in a sector included in Annex 5 of the EEAG and having an electro-intensity below 20% (EEAG point 197);

⁴ The Greek authorities refer to judgments of 3 March 2005, *Wolfgang Reiser*, C-172/03, EU:C:2005:130, paragraph 40; judgment of 8 November 2001, *Adria Wien Pipeline*, C-143/99, EU:C:2001:598, paragraph 41; judgment of 11 December 2014, *Republic of Austria v European Commission*, T-251/11, EU:T:2014:1060, paragraph 96; and judgment of 22 December 2008, *British Aggregates v Commission*, C-487/06 P, EU:C:2008:757, paragraph 83.

⁵ Judgment of 29 April 2004, *GIL Insurance*, C-308/01, EU:C:2004:252, paragraph 78.

⁶ Communication from the Commission – Guidelines on State aid for environmental protection and energy 2014-2020, OJ C 200, 28.6.2014, p.1.

⁷ Gross Value Added

- (d) 100% of ETMEAR contribution for undertakings not eligible to any of the reductions above.
- (27) The following methodology is used to calculate the ETMEAR contribution of the individual undertaking:
- (a) The ETMEAR rate (EUR/MWh) is calculated by dividing the amount of ETMEAR levy paid in a given year by the undertaking by its annual consumption, taking into account the possible application of the annual cap for some large users;
- (b) The ETMEAR rate is then compared to the highest ETMEAR contribution among all consumer categories.
- (28) The Greek authorities have submitted evidence showing that most undertakings except, as of 2013, high voltage consumers and medium voltage consumers with annual total consumption over 13 GWh have paid an average ETMEAR contribution that is higher than or at least equal to the minimum ETMEAR contributions required under the EEAG, as listed in recital (26) above (see Table 4 below). However, the Greek authorities have identified some users (two in 2011 and six in 2012) who paid less than the above-mentioned minimum ETMEAR contribution because of the cap.

Table 4. Percentage of ETMEAR contribution over the maximum ETMEAR charge

Consumer Category		2018	2017	2016	2015	2014	2013		2012		2011
			Unit ETMEAR Charge €/MWh								
High Voltage (HV)		2,47	2,51	2,41	2,23	2,23	3,55	1,79	2,96	4,48	1,04
Medium Voltage (MV)	>13GWh	2,47	2,51	2,48	2,31	2,31	7,76	8,87	5,35	7,17	1,69
	< 13GWh	8,6	9,76	10,12	12,77	12,77					
Agricultural MV		8,78	9,71	10,12	10,83	10,83	5,57	6,97	2,29	4,35	0,74
Agricultural LV		9,39	10,47	10,69	11,39	11,39	6,48	7,33	2,96	5,61	0,9
Residential LV		22,67	24,77	24,87	26,3	26,3	9,53	20,8	5,99	8,87	1,95
Other Uses LV		26,08	27,79	28,21	30,89	30,89	14,91	21,77	7,38	9,63	2,49
MAX		26,08	27,79	28,21	30,89	30,89	14,91	21,77	7,38	9,63	2,49
		Percentage of maximum contribution									
High Voltage (HV)		9,5%	9,0%	8,5%	7,2%	7,2%	23,8%	8,2%	40,1%	46,5%	41,8%
Medium Voltage (MV)	>13GWh	9,5%	9,0%	8,8%	7,5%	7,5%	52,0%	40,7%	72,5%	74,5%	67,9%
	< 13GWh	33,0%	35,1%	35,9%	41,3%	41,3%	0,0%	0,0%	0,0%	0,0%	0,0%
Agricultural MV		33,7%	34,9%	35,9%	35,1%	35,1%	37,4%	32,0%	31,0%	45,2%	29,7%
Agricultural LV		36,0%	37,7%	37,9%	36,9%	36,9%	43,5%	33,7%	40,1%	58,3%	36,1%
Residential LV		86,9%	89,1%	88,2%	85,1%	85,1%	63,9%	95,5%	81,2%	92,1%	78,3%
Other Uses LV		100,0%	100,0%	100,0%	100,0%	100,0%	100,0%	100,0%	100,0%	100,0%	100,0%

Source: Greek authorities

- (29) The adjustment plan thus covers adjustments for high voltage consumers and medium voltage consumers with an annual total consumption over 13 GWh, whose contribution will be adjusted as of 2013 and 2014, respectively. Furthermore, for those consumers who did not pay the minimum ETMEAR

contribution in 2011 and 2012, the adjustment plan covers adjustments for their contributions as of 2011 and 2012 as the case may be.

- (30) The Greek authorities explained that currently there are 238 consumption points in total, out of which 44 concern beneficiaries that are active in sectors included in Annex 3 of the EEAG, 18 are included in Annex 5 of the EEAG, and 10 are included in both Annexes. The remaining 166 connection points concern beneficiaries active in non-eligible sectors. In particular, the non-eligible consumers connected at high voltage are electricity producers (123), transport companies (11), and lignite mines (5). In terms of volumes of electricity concerned by reductions, those companies represent approximately 9.6 million MWh/year.
- (31) In case an undertaking has not respected the minimum contribution in line with the EEAG, a progressive adjustment is imposed towards the relevant minimum contribution. The progression applied is described in Table 5 below. The progression curve of the adjustment plan will be the same for both the HECHP share and the RES share of the ETMEAR rate.

Table 5. Progressive adjustment plan

Year	Increase
2011	3%
2012	6%
2013	10%
2014	20%
2015	30%
2016	45%
2017	60%
2018	75%
2019	100%

- (32) The adjustment will be implemented according to the following formula:

$$NewEtmear,i = (EtmearPaid,i) + (PercAdj,i) * [(MinContr2019) - (EtmearPaid,i)]$$

where

NewEtmear,i is the ETMEAR to be paid for year i (as a percentage of the full charge)⁸

EtmearPaid,i is the ETMEAR paid for year i (as a percentage of the full charge)

PercAdj,i is the percentage foreseen by the adjustment plan for year i

MinContr2019 is the minimum contribution in year 2019

- (33) The Greek authorities committed to ensure that the ETMEAR contributions paid by all beneficiaries of reductions since 2011 correspond to the minimum ETMEAR contributions that they have to pay under the adjustment plan. Should

⁸ Based on the ETMEAR contributions described in recital (28) above.

that not have been the case in the past, the contribution due by those beneficiaries under the adjustment plan will be increased by an amount equal to the difference between the contributions already paid and the contributions due under the adjustment plan (i.e. by way of reductions of the benefit they were initially entitled to).

2.3. The complaints on the existing measure

- (34) The first complaint was submitted by an EU private citizen, who was informed on 22 August 2014 that the submission could not be treated as formal complaint within the meaning of Article 20(2) of Regulation 659/1999 as amended,⁹ which was in force at the time, since he could not be considered as interested party within the meaning of that Regulation, not being in a competitive relationship with the potential beneficiaries of the scheme. The same citizen forwarded the same complaint (with additional information) in conjunction with another EU citizen, who claimed that her business, connected at low voltage, was affected by the reductions granted to competitors connected at medium and high voltage.
- (35) In sum, the complainants were concerned that the Hellenic Republic had introduced, in favour of high voltage and medium-voltage consumers, reductions in contributions towards the ETMEAR levy. The complainants argue that the ETMEAR levy is imposed unevenly, to the detriment of low voltage consumers. The complainants also referred to the fact that the annual ETMEAR charge per consumption location is subject to a ceiling, at that time set at EUR 800,000. In particular, the complainants argue that the existing measure constitutes State aid, being different than the measure approved by the Commission in case SA.33384 (2011/N) – Austria Ökostromgesetz 2012 (Green Electricity Act 2012).
- (36) On compatibility, the complainants dispute the possibility to declare the measure compatible under section 3.7.2. and 3.7.3. of the EEAG.
- (37) As explained in recital (4) above, the present decision covers those aspects of the complaint.

2.4. The ETMEAR rates from 1 January 2019

- (38) From 1 January 2019, the undertakings eligible for ETMEAR reductions will be divided in the following categories:
 - (a) Undertakings active in sectors listed in Annex 3 of the EEAG;
 - (b) Undertakings active in sectors listed in Annex 3 of the EEAG with an electro-intensity above 20%;
 - (c) Undertakings active in sectors listed in Annex 5 of the EEAG with an electro-intensity equal or above 20%;

⁹ Council Regulation (EU) No 734/2013 of 22 July 2013 amending Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty.

- (d) Undertakings operating outside sectors listed in Annex 3 and 5 of the EEAG but having benefitted from ETMEAR reductions before 1 July 2014.
- (39) The Greek authorities observed that pursuant to Article 10 of Law 4342/2015, which implements Article 8, paragraph 4, of Directive 2012/27/EU ("Energy Efficiency Directive")¹⁰, all undertakings except for SMEs are obliged to undergo an energy audit, conducted by energy auditors in an independent and cost-effective way, on the basis of minimum criteria, every four years periodically. The Greek authorities have indicated their intention to oblige all beneficiaries of the ETMEAR reductions, including SMEs, to put an Energy Management System in place or to perform an energy audit. Since the market for energy audits in Greece is not mature yet, the Greek authorities will limit the extension to SMEs of such obligation during the first years of application of the scheme.¹¹
- (40) Reductions in ETMEAR levy will not be granted to undertakings in difficulty¹² or to undertakings which are the subject of an outstanding recovery order following a Commission Decision declaring an aid illegal and incompatible with the internal market. Reductions will also not be granted to undertakings which have outstanding tax or social security liabilities to the State or to municipal authorities, except where such outstanding liabilities have been rescheduled or deferred.
- (41) Only undertakings with an annual consumption above a certain level of consumption that is yet to be decided by the Greek authorities but which will be set between 250 to 500 MWh¹³ (the consumption threshold) will be eligible for the reduction. The Greek authorities have justified the introduction of the consumption threshold with the need to avoid excessive administrative burden. As regards the level of such threshold, the Greek authorities argued that undertakings with an annual consumption below the threshold of 250/500 MWh would not have an interest in applying for reductions as the administrative costs related to such an application (e.g. those for implementing the Energy Management System) would offset the amount of aid received.¹⁴ All beneficiaries

¹⁰ Directive 2012/27/EU of the European Parliament and 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 315 of 14.11.2012, p.1)

¹¹ In particular, all SMEs will be exempted in the first year of application (2019). For the second year of application (2020) the obligation to undergo an energy audit will be imposed to SMEs with an annual electricity consumption of at least 5 GWh. This threshold will decrease as the market of energy auditors is getting more mature. The threshold will be in line with the consumption threshold described in recital (41). The Greek authorities foresee that, on the one hand, there will progressively be more active energy auditors; on the other hand, the cost of an energy audit will gradually decrease.

¹² As defined at point 20 of the Communication from the Commission - Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty, OJ C 249, 31.7.2014, p. 1–28.

¹³ The Greek authorities are in the process of gathering the necessary data to conclude at which level the threshold should be set within the above-mentioned range. The final threshold will be fixed in the ministerial decision implementing the scheme (see recital (52) below).

¹⁴ The Greek authorities provided the following example concerning an undertaking connected in medium voltage with consumption of 500 MWh/year, active in Annex 3 (eligible for 15% of the charge). For such a user the reduction of ETMEAR rate could be around EUR 10 000 (500MWh*85%*23€/MWh). The related administrative and technical costs would be approximately

will pay the full ETMEAR levy for the first 250/500 MWh of electricity consumption per year. Therefore, reductions will only be applied to the levy paid for consumption above this threshold.

- (42) Undertakings referred to in points (a) to (c) will pay 15% of the full ETMEAR rate for consumption above the consumption threshold. Undertakings mentioned in point (d) will pay at least 20% of the full ETMEAR rate for consumption above the consumption threshold.
- (43) Furthermore, costs resulting from the ETMEAR rate will be further limited for certain beneficiaries by the establishment of a cap at undertaking level. The cap will be equal to 4% of the GVA for undertakings whose electro-intensity is equal or above 10% and below 20%, and to 0.5% of the GVA for undertakings whose electro-intensity is equal or above 20%.
- (44) A minimum rate of the ETMEAR is also set, independently of the cap. Undertakings will pay a minimum rate of 0.3 EUR/MWh.
- (45) The GVA and electro-intensity of the beneficiaries will be calculated in accordance with Annex 4 of the EEAG.¹⁵
- (46) The various levels of ETMEAR charges will be determined each year by the RAE on the basis of the financial needs of the Special Account and of the relevant data on eligible consumers submitted by DAPEEP on the basis of the following formula:

$$(ETMEAR_{year,n}) = \Sigma(EC,i) * (\Pi,i) * (RefCharge) + (\Sigma maxcharge,j),$$

$$(RefCharge) = [(ETMEAR) - (\Sigma maxcharge,j)] / [\Sigma(EC,i) * (\Pi,i)]$$

where

- (i) is the consumer category of the adjustment plan
- (j) are the eligible consumers for the cap described at recital (43)
- (Π,i) is the percentage of the ETMEAR according to the consumer category and the adjustment plan of the relevant year
- (EC,i) is the electricity consumption for each consumer category (based on historical data of each beneficiary)

EUR 13 000, (EUR 3 000 for the application and for its review by an external auditor, and EUR 10 000 related to the obligation to perform an energy audit).

¹⁵ For the calculation of the electro-intensity of the undertaking, the Greek authorities will not use electricity consumption efficiency benchmarks for the industry, as they are not available. The arithmetic mean over the most recent 3 years for which data is available will be used, in line with Annex 4 of the EEAG. For the calculation of the GVA of self-generators, only the costs and revenues related to the industrial activity of the undertaking (and not those of the production of electricity) will be considered.

($\Sigma \text{maxcharge}_{j,i}$) is the maximum ETMEAR for beneficiary that make use of cap (the beneficiary that is not adjusted)

(ETMEAR) is the total ETMEAR based on RAE's forecast

- (47) The aid is granted *ex ante* in the form of a reduction from charges. A monitoring system has been set up to ensure that any over payment of aid will be repaid. Beneficiaries will be included in a dynamic e-register of aid beneficiaries which will be managed by DAPEEP. DAPEEP is under the obligation to monitor the implementation of the aid measure and to exercise preventive, continuous and ex-post control over beneficiaries. Eligibility will be verified on an annual basis by DAPEEP directly or through external partners. Every year, the beneficiary's verification body (e.g. a licensed accountant) is to submit the actual data on the electricity usage for the previous year.¹⁶ On that basis, DAPEEP will calculate the actual ETMEAR amounts to be paid by each beneficiary for the previous year.

2.4.1. *Reductions of the ETMEAR levy for self-generated electricity*

- (48) Self-generation refers to the situation where an entity consumes the electricity that it has itself produced.
- (49) The Greek authorities distinguishes between three different types of self-generators:
- (a) RES self-generators;
 - (b) HECHP self-generators; and
 - (c) Other types of self-generators.
- (50) As a general rule, all consumers are subject to the ETMEAR levy on the basis of the electricity consumed, including self-generated electricity. However, Article 23 of Law No 4414/2016 exempts self-generators from paying ETMEAR levy on self-generated electricity from RES or HECHP. The Greek authorities have confirmed that those self-generators do not receive public support for the part of electricity produced from RES or HECHP that is exempted from ETMEAR.
- (51) The Greek authorities confirmed that the general principles of the system will also apply to self-generators.

2.5. **Duration, legal basis and budget**

- (52) The legal basis for the notified measure is a draft law, which will also authorise the Minister for Environment and Energy to issue a ministerial decision implementing the modified scheme. Article 143 of Law 4011/2011 on the imposition of an ETMEAR charge will also be amended.
- (53) The scheme will enter into force on 1 January 2019, and will remain in force for ten years. The Greek authorities have confirmed that the scheme will not enter

¹⁶ The Greek authorities indicated that in case of false or inaccurate information altering the classification or the amount of the ETMEAR to be paid, the aid shall be repaid in whole or in part with interests and a fine shall be imposed.

into force before the Commission has taken a positive decision with regard to the scheme.

- (54) The estimated number of beneficiaries is over 1 000, and the annual budget of the notified measure is EUR 200 million.

2.6. Transparency and cumulation

- (55) The Greek authorities have confirmed that the transparency requirements set out in section 3.2.7 of the EEAG will be complied with.
- (56) The Greek authorities have confirmed that the aid granted under the notified measure cannot be cumulated with other types of aid to cover the same eligible costs.

3. ASSESSMENT

3.1. Existence of aid within the meaning of Article 107(1) of the TFEU

- (57) A measure constitutes State aid in the meaning of Article 107(1) TFEU if it is "*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 [...] in so far as it affects trade between Member States*".
- (58) In determining whether a measure constitutes State aid within the meaning of Article 107(1) of the Treaty, the Commission has to verify whether the measure:
- confers an advantage on certain undertakings or certain sectors (selective advantage);
 - is imputable to the State and involves State resources;
 - distorts or threatens to distort competition; and
 - is liable to affect trade between Member States.

3.1.1. Selective advantage

The existing reduced contributions

- (59) In the case at hand, the aid recipients have received an advantage because they are being exempted for part of the cost of the mandatory ETMEAR levy imposed on electricity consumers, which is used to finance support to energy from RES and HECHP. In fact, by virtue of those exemptions they are relieved of a general system charge that they would normally have had to pay also on the electricity consumed.
- (60) In the case of a charge, the appropriate criterion for establishing the selectivity of the advantage at issue consists in determining whether the measure introduces, between operators that are, in the light of the objective pursued by the general system charge concerned, in a comparable factual and legal situation, a distinction

that is not justified by the nature and general structure of that system (see, to that effect, *Commission v MOL*,¹⁷ *World Duty Free*¹⁸ and *AT Ökostrom*).¹⁹

- (61) In this case, the Greek authorities have argued that these advantages are not granted on a selective basis because the undertakings belonging to the various categories are not in a comparable factual and legal situation in the light of the objective pursued by the system. In its view a uniform charge applied to all consumers would be excessive to electro-intensive consumers and would threaten their competitive position. In addition, the different levels of reductions result from the application of objective criteria in line with the internal logic of the system.
- (62) The Commission however observes that the comparison between the various electricity consumers categories must, for the purpose of the assessment of selectivity, be performed in the light of the objective pursued by the general system charge concerned (the ETMEAR levy), which is the financing of RES and HECHP support. With regard to that objective, considerations on the competitive position of the electricity consumers are not pertinent.
- (63) In addition, the Commission notes that the budget of the ETMEAR charge is allocated among the various consumer categories on the basis of different coefficients established by the RAE every year, which differ depending on the consumer category. As confirmed by the Greek authorities, the rationale behind the different coefficients was to reduce the impact of the ETMEAR levy for large electric energy intensive industrial facilities, for which the relevant costs reflect a significant percentage of their total production costs and are, therefore, critical for the competitiveness of their products. Those undertakings are mostly connected to high voltage or medium voltage level.²⁰
- (64) The Commission also observes that the creation of a new consumer category of medium voltage electricity consumers with annual total consumption over 13 GWh per consumption point was specifically intended to grant them a higher percentage discount on the ETMEAR levy.
- (65) The Commission further notes that the annual cap was also specifically designed to further limit the impact of the ETMEAR levy on large electricity consumers, which is selective in itself.
- (66) The Commission therefore concludes that the measure conferred a selective advantage to the undertakings in the consumer categories which benefitted from specific coefficients which resulted in a lower impact of the ETMEAR levy compared to the other consumer categories.

¹⁷ See judgment of 4 June 2015, *Commission v MOL*, C-15/14 P EU:C:2015:362, paragraph 61.

¹⁸ See judgment of 21 December 2016, *Commission v World Duty Free Group*, C-20/15 P, EU:C:2016:981, paragraph 60.

¹⁹ See judgment of 11 December 2014, *Austria v Commission*, T-251/11, EU:T:2014:1060, paragraph 96.

²⁰ This conclusion would be different if energy-intensive undertakings were connected on all grid levels. See, for example, Commission decision of 08.02.2012 in case SA.33384 (2001/N) Austria, *Okostromgesetz 2012* (Green Electricity Act 2012).

- (67) With the adoption of the notified draft law, the Greek authorities have indicated that they will grant reductions to EIUs from the ETMEAR charge as from 1 January 2019. Those reductions represent an advantage for EIUs as they are alleviated the burden stemming from the application of the normal general charge system. The reductions are selective, as they are limited to undertakings active in certain sectors and reaching a certain level of electro-intensity and consumption, or to undertakings which were eligible for reductions from the general charge before 1 July 2014.
- (68) As regards the exemption from paying the ETMEAR levy on self-generated electricity from RES or HECHP under Article 23 of Law No 4414/2016, the Commission concludes that it is in line with the logic of the system. In fact, self-generators do not receive public support for the part of electricity produced from RES or HECHP that is exempted from ETMEAR, but they still contribute to the objective of the RES support scheme (see footnote 1 above), that is increasing the share of electricity produced from renewable energy sources in the total electricity consumption in Greece. Therefore, it can be accepted that it is within the logic of the system that no ETMEAR is levied on electricity produced from renewable energy sources by the self-generators that do not benefit from public support for the self-generated electricity.²¹ The Commission therefore concludes that the exemptions granted to self-generated electricity from RES or HECHP are not selective.

3.1.2. State resources and imputability

- (69) According to settled case-law, only advantages which are granted directly or indirectly through State resources are to be regarded as aid within the meaning of Article 107(1) TFEU. The distinction between aid granted by the State and aid granted through State resources serves to bring within the definition of aid not only aid granted directly by the State, but also aid granted by public or private bodies designated or established by the State.²² Thus, resources do not need to transit through the State budget to be considered as State resources. It is sufficient that they remain under public control.²³
- (70) Proceeds of levies imposed by the State and which are then managed and apportioned in accordance with the provisions of the legislation thus constitute State resources (*Vent de Colère*).²⁴

²¹ See Commission decision of 19 December 2017 in case SA.46526 – Germany, Reductions on EEG-surcharges for self-consumption, recital 96.

²² To this effect, see judgment of 22 March 1977, *Steinike & Weinlig*, C-78/76 EU:C:1977:52, paragraph 21, judgment of 17 March 1993, *Sloman Neptun*, joined cases C-72/91 and C-73/91, EU:C:1993:97, paragraph 19, and the case-law cited in the EEG 2014 Decision, paragraph 81.

²³ See judgment of 16 May 2002, *France v Commission*, C-482/99 EU:C:2002:294, paragraph 37, and the case-law cited in the EEG 2012 Decision, paragraph 83.

²⁴ See judgment of 19 December 2013, *Vent de Colère*, C-262/12 EU:C:2013:851, paragraph 25.

- (71) In the present case, the Commission notes that the ETMEAR levy is imposed by law on final consumers and the proceeds are transferred to the Special Account managed by DAPEEP (former LAGIE), which is a 100% State owned company, in accordance with that law (see recital (10) above).
- (72) Therefore, the resources were and will be under State control and qualify as State resources.
- (73) As a result, as acknowledged by the Greek authorities in their submission of 1 July 2016, the reductions resulting from the application of different coefficients to the various consumer categories, as well as the reductions under the notified draft law, are financed from State resources. Those reductions constitute an additional burden for the State, as any reduction in the amount of the ETMEAR levy has the effect of reducing the amounts collected from the consumers category concerned. Such reductions entail a lack of funds in the Special Account, which subsequently is recovered from other consumer categories (see recitals (17) to (20) above).
- (74) The measure is therefore imputable to the State and through State resources.

3.1.3. Effect on trade and impact on competition

- (75) Some beneficiaries are electro-intensive users active in sectors listed in Annex 3 and Annex 5 to the EEAG. Hence, they are active in sectors in which trade between Member States takes place (see paragraph 185 of the EEAG). The measure is therefore liable to distort competition and affect trade between Member States.

3.1.4. Conclusions

- (76) In the light of the above, the Commission concludes that the reductions of ETMEAR levy and caps granted to some consumer categories constitute State aid within the meaning of Article 107(1) TFEU.

3.2. Lawfulness of the aid

- (77) At the time of the introduction of the scheme, the reduction in the financial burden on EIUs resulting from RES and HECHP support was not notified to the Commission. Since aid has been granted in breach of Article 108(3) TFEU, such aid is illegal.

3.3. Compatibility of the aid

- (78) In order to determine the applicable compatibility rules, the Commission considers that, in contrast to environmental taxes, the ETMEAR levy lacks the behavioural steering effect that environmental taxes within the meaning of paragraph 167 of the EEAG should have (see paragraphs 167 and 181 of the EEAG),²⁵ as it does not aim at changing the behaviour of the ETMEAR payers

²⁵ According to Paragraph 167 of the EEAG environmental taxes are imposed in order to increase the costs of environmental harmful behaviour, thereby discouraging such behaviour. By contrast, Paragraph 181 of the EEAG indicates that charges to finance support to energy from renewable sources do not as such target a negative externality and accordingly have no direct environmental

but at providing funding of specific activities (energy productions from RES and HECHP installations). Therefore, the Commission concludes that the ETMEAR levy does not qualify as an environmental tax as defined in the EEAG (see paragraph 19(15) of the EEAG).

- (79) In light of these considerations, the Commission has therefore assessed the reductions of the ETMEAR levy dedicated to financing the support of renewables on the basis of section 3.7.2. of the EEAG (Aid in the form of reductions in the funding of support for energy from renewable sources). As aid has been granted already before the entry into force of the EEAG, the Commission has also assessed, on the basis of section 3.7.3. of the EEAG (Transitional rules for aid granted to reduce the burden related to funding support for energy from renewable sources), the way in which Greece applies the transitional rules to ensure the past aid is compatible with the internal market.
- (80) Since Sections 3.7.2 and 3.7.3. of the EEAG apply solely to reductions in funding of support for energy from renewable sources, the assessment criteria laid down herein may not be applied directly to the ETMEAR levy reductions for financing the support of HECHP installations. The Commission has therefore assessed the reductions of the ETMEAR levy dedicated to financing HECHP support directly under the Article 107(3)(c) of the Treaty.

3.3.1. Aid in the form of reductions in the funding of support for RES

- (81) Paragraph 182 of the EEAG provides that, whilst the financing of energy support schemes should in principle be recovered in a way which does not discriminate between the consumers on whom its costs are imposed, Member States may wish to grant partial compensation for the additional costs of such schemes to undertakings particularly affected by the financing costs who would otherwise be put at a significant competitive disadvantage. Those targeted reductions may be needed to secure a sufficient financing base for support to energy from renewable sources and hence help reaching the renewable energy targets set at EU level.
- (82) Under Section 3.7.2 of the EEAG reductions granted to EIUs on electricity charges used to finance support to RES are considered as compatible if they are:
- limited to sectors and undertakings that are electro-intensive and exposed to international trade as identified on the basis of the criteria set out in paragraphs 185-186 of the EEAG;
 - proportionate, i.e. limited to the reduction levels set out in paragraphs 187 to 190 of the EEAG.

- (83) Compatibility with those criteria is examined below.

3.3.1.1. Eligibility

- (84) Paragraphs 185-186 of the EEAG provide that aid in the form of reductions in the funding of support for energy from renewable sources should be limited to sectors that are exposed to a risk to their competitive position due to the costs resulting from the funding of support to energy from renewable sources as a function of

effect. They are therefore different from environmental taxes within the meaning of Paragraph 167 of the EEAG, even if they may also result in higher electricity prices.

their electro-intensity and their exposure to international trade. Accordingly, aid may be granted if the undertaking belongs to the sectors listed in Annex 3 to the EEAG. Aid may also be granted to undertakings active in sectors with a trade intensity of at least 4% at Union level if the undertaking has an electro-intensity of at least 20%.

- (85) As set out in recital (38) above, as of 1 January 2019, reductions will be granted to undertakings from all sectors included in Annex 3 and to undertakings active in sectors listed in Annex 5 to the EEAG having an electro-intensity of minimum 20% in line with paragraphs 185 and 186 of the EEAG.
- (86) The Commission observes that the specific definition of electro-intensity based on GVA contained in Annex 4 to the EEAG applies to determine eligibility of undertakings in accordance with paragraph 186 of the EEAG and that the Greek authorities will apply the methodology described in Annex 4 to the EEAG for determining whether the undertakings concerned reaches 20% of electro-intensity (see recital (45) above). For the purpose of determining the electricity consumption used to calculate the electro-intensity within the meaning of Annex 4 to the EEAG, the Greek authorities will use the arithmetic mean of the electricity consumption over the most recent 3 years for which data is available. This is in line with paragraph 186 and Annex 4 of the EEAG given that there are currently no standard electricity consumption energy efficiency benchmarks available for the industry.
- (87) In the light of the above, the Commission finds the aid to be in line with paragraphs 185 to 186 of the EEAG.
- (88) Paragraph 187 of the EEAG indicates that within the eligible sector, Member States need to ensure that the choice of beneficiaries is made on the basis of objective, non-discriminatory and transparent criteria and that aid is granted in principle in the same way for all competitors in the same sector if they are in the same factual situation.
- (89) As described under recital (39) above, all potential beneficiaries will gradually be obliged to put an Energy Management System in place or to perform an energy audit. The Commission notes that SMEs are currently not obliged to perform an energy audit under EU rules. Article 8, paragraph 2, of the Energy Efficiency Directive provides that Member States should develop programmes to encourage SMEs to undergo energy audits²⁶. The Commission notes that the purpose of energy audits is to obtain adequate knowledge of the existing energy consumption profile of a building or group of buildings, an industrial or commercial operation or installation or a private or public service, identifying and quantifying cost-effective energy savings opportunities, and reporting the findings. The Commission therefore concludes that the extension of that obligation to SMEs which receive reductions of the ETMEAR levy will contribute to the reduction of market distortions over time. The gradual introduction of that obligation to SMEs also appears justified by the current state of the market for energy audits in Greece and the necessary development thereof, as explained in recital (39)(39)

²⁶ 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 315, 14.11.2012, p. 1–56.*

above²⁷. As the consumption threshold for SMEs will be set at the level where the cost of implementing an Energy Management System or conducting an energy audit would practically equal the likely amount of aid, such condition appears objective, non-discriminatory and transparent.

- (90) Another eligibility criterion (see recital (41) above) is a minimum consumption threshold limits eligibility to consumers with an annual electricity consumption of at least 250-500 MWh. Greece has indicated that the threshold is intended to avoid excessive administrative burden. Greece has justified the level of the threshold by explaining that below this range, the cost of implementing an Energy Management System or conducting an energy audit would practically equal the likely amount of aid. As long as the threshold is ultimately set within the above-mentioned range, the Commission considers the minimum threshold justified based on the need to avoid excessive administrative burden, as it has been accepted in similar cases.²⁸
- (91) The Greek authorities also require the potential beneficiary not to have outstanding tax or social security liabilities to the State or to municipal authorities, except where such outstanding liabilities have been rescheduled or deferred. This criterion appears objective, non-discriminatory and transparent.
- (92) A further eligibility criteria imposed on the potential beneficiaries require that they are not a firm in difficulty, as defined in the Guidelines on State aid for rescuing and restructuring firm in difficulty, and that the beneficiary is not subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market. These criteria directly reflect the requirements of paragraphs 16 and 17 of the EEAG and are objective, non-discriminatory and transparent.
- (93) The Commission therefore concludes that the additional eligibility criteria imposed by the Greek authorities comply with paragraph 187 of the EEAG.

3.3.1.2. Proportionality

- (94) According to paragraph 188 of the EEAG, the Commission will consider the aid to be proportionate if the aid beneficiaries pay at least 15% of the additional costs without reduction.
- (95) Paragraph 189 of the EEAG allows a further reduction of the contribution of the beneficiaries to RES financing to 4% of their GVA. In addition, for undertakings having an electro-intensity above 20% the aid can be limited to 0.5% of their GVA.

²⁷ Recital 46 of the Energy Efficiency Directive provides that a sufficient number of reliable professionals competent in the field of energy efficiency should be available to ensure the effective and timely implementation of the Directive, for instance as regards compliance with the requirements on energy audits and implementation of energy efficiency obligation schemes.

²⁸ Commission decision of 5 October 2016 in case SA.41998 (2015/N) – Support for electro-intensive users in the form of reductions in electricity support scheme contributions; Commission decision of 31 August 2015 in case SA.42424 (2015/N) – Denmark – Reduced contribution to financing of RES support for energy-intensive users; Commission decision of 23 May 2017 in case SA.42854 (2015/N) – Latvia – Support for energy intensive industry; and Commission decision of 23 May 2017 in case SA.38635– Italy – Reductions of the renewable and cogeneration surcharge for electro-intensive users in Italy.

- (96) The new system complies with the minimum required own contributions under the EEAG: the beneficiaries must pay at least 15% of ETMEAR used to finance the support to renewables, or at least 4% of their GVA (for undertakings with electro-intensity equal or above 10% and below 20%) or 0.5% of their GVA (for undertakings with electro-intensity of at least 20%) (see recitals (39) to (43) above).
- (97) The specific definition of electro-intensity based on GVA contained in Annex 4 to the EEAG applies also in order to implement the GVA cap of 0.5% referred to under paragraph 189 of the EEAG. As indicated in recital (43)(43), the aid will be further limited to 4% of the GVA for undertakings active in sectors listed in Annex 3 with an electro-intensity equal or above 10% and below 20%, or 0.5% of the GVA for undertakings with an electro-intensity equal or above 20%. The Commission considers that that is in line with the EEAG as these limitations are objective, transparent and do not discriminate between undertakings in a similar situation.
- (98) As indicated in recital (44) a minimum ETMEAR rate is established. Where applicable, that minimum charge will further limit the amount of aid granted to the beneficiaries.
- (99) In the light of the above, the notified aid is therefore in line with paragraphs 188 to 190 of the EEAG.
- (100) The aid is granted in the form of an *ex ante* reduction from charges in combination with a monitoring system (see recital (47) above), in line with paragraph 192 of the EEAG.

3.3.1.3. Conclusion

- (101) Based on the above, the Commission considers that the reductions from the ETMEAR levy component dedicated to financing the support of renewables to be implemented by the Greek authorities as of 1 January 2019 are compatible with the internal market on the basis of Section 3.7.2 of the EEAG.

3.3.2. *Transitional rules for aid granted to reduce the burden related to funding support for energy from renewable sources*

- (102) In line with paragraphs 193 and 194 of the EEAG, Member States are to apply eligibility and proportionality criteria set out in Section 3.7.2 of the EEAG at the latest by 1 January 2019. Aid granted in respect of a period before that date will be considered compatible if it satisfied the same criteria or if it complies with an adjustment plan.
- (103) According to paragraph 195 of the EEAG, to avoid an abrupt disruption for individual undertakings, such adjustment shall entail progressive adjustment to the aid levels resulting from the application of the eligibility and proportionality criteria set out in section 3.7.2. Paragraph 196 of the EEAG clarifies that to the extent that aid was granted in respect of a period before the date of application of the EEAG, the adjustment plan shall also provide for a progressive application of the eligibility and proportionality criteria for that period.
- (104) Paragraph 197 indicates that to the extent that aid in the form of reduction or exemption from the burden related to funding support for electricity from

renewable sources was granted before the date of application of the EEAG to undertakings that are not eligible under section 3.7.2 of the EEAG, such aid can be declared compatible provided that the adjustment plan foresees a minimum own contribution of 20% of the additional costs of the surcharge without reduction, to be established progressively and at the latest by 1 January 2019.

- (105) For the aid already granted and that will continue to be granted until the reform described under section 2.2 enters into force on 1 January 2019, the Greek authorities submitted an adjustment plan in which they undertook to verify to what extent the reductions would comply with the EEAG requirements.
- (106) The Commission finds that, even if the adjustment plan is also linked to HECHP support, its starting point in 2011 is justified for the reasons explained in recitals (128)-(129) below.²⁹
- (107) The adjustment plan was drafted by the Greek authorities taking due account the above EEAG requirements. For all aid already granted, the Greek authorities first verified if the eligibility and proportionality criteria set out in section 3.7.2 were complied with.
- (108) For the assessment, the Greek authorities compared the ETMEAR rate (EUR/MWh) paid by the beneficiaries to the maximum ETMEAR charge (ETMEAR contribution), and this has been compared to the minimum required by the EEAG (see recital (27) above).
- (109) Beneficiaries who did not qualify as EIUs within the meaning of paragraphs 185-187 of the EEAG or did not contribute to the minimum level required, are included in the adjustment plan that provides for a progressive increase of their own contribution according to the timetable provided in Table 5 (see section 2.2 above).
- (110) In particular, non-eligible undertakings (i.e. undertakings not covered either by Annex 3 or Annex 5 or undertakings covered by Annex 5 but with an electro-intensity below 20%) will progressively be adjusted to pay 100% of the ETMEAR rate. As mentioned in recital (103), this is in line with paragraph 195 of the EEAG.
- (111) Non-eligible undertakings mentioned in point (38)(d) will pay an ETMEAR contribution of at least 20% from 1 January 2019. As mentioned in recital (104) above, this is in line with paragraph 197 of the EEAG.
- (112) The Commission notes that the adjustment plan submitted by the Greek authorities is based on a very extensive and detailed analysis of the situation of the beneficiaries, taking into account all relevant economic factors linked to the renewable policy. Therefore the Commission considers that paragraph 198 of the EEAG is complied with.

²⁹ See, in this respect, also Commission Decision of 22 May 2017 in Case SA.42393 – Germany – Reduced CHP charges, recitals 161 and 167, to which this Decision refers on this point. See also Commission Decision of 23 May 2017 in case SA.38635– Italy – Reductions of the renewable and cogeneration surcharge for electro-intensive users in Italy.

- (113) The Commission also notes that the Greek authorities did not notify the adjustment plan within the deadline established in paragraph 200 of the EEAG. The Greek authorities did however notify the adjustment plan further to the request of information of 7 April 2016 (see recitals (24)-(25) above). The Commission notes that the deadline at issue is a procedural requirement that was intended to invite Member States to adjust the existing schemes already in place to the new compatibility provisions established in the EEAG, to the extent that those schemes involved State aid. The Commission also notes that compliance with such deadline does not affect the functioning of the adjustment plan as foreseen in Section 3.7.3 of the EEAG.
- (114) Based on the above, the Commission considers that the adjustment plan submitted by the Greek authorities complies with Section 3.7.3 of the EEAG.

3.3.3. Reductions from the ETMEAR used to finance support for HECHP

- (115) The qualification of the notified reductions from the ETMEAR levy component used to finance HECHP is the same as for the reductions from the ETMEAR levy component used to finance RES: for the reasons stated above (see recital (78) above), it does not fall under the definition of "environmental tax". Section 3.7.2 of the EEAG applies only to surcharges that do not qualify as environmental taxes, dedicated to the funding of renewable support, but does not cover the same surcharges dedicated to the funding of HECHP.
- (116) Furthermore, no other guidelines are applicable to the reductions granted on the ETMEAR levy component used to finance HECHP support. However, the Commission may declare an aid measure compatible directly under Article 107(3)(c) TFEU if it is necessary and proportionate and if the positive effects for the common objective outweigh the negative effects on competition and trade.
- (117) The above conditions can be considered as fulfilled if the following questions can be positively replied:
- (a) Is the aid measure aimed at a well-defined objective of common interest?³⁰
 - (b) Is it targeted towards a situation where aid can bring about a material improvement that the market alone cannot deliver (for example because it addresses a market failure)?
 - (c) Is the aid well designed to deliver the objective of common interest (necessity of the aid)? In particular:
 - i. Is the aid measure an appropriate and necessary instrument, i.e. are there other, better-placed instruments?
 - ii. Is there an incentive effect, i.e. does the aid change the behaviour of firms?

³⁰ Case T-162/06 *Kronopoly v Commission* ECLI:EU:T:2009:2, especially paragraphs 65, 66, 74 and 75.

- iii. Is the aid measure proportional, i.e. could the same change in behaviour be obtained with less aid?
 - (d) Are the distortions of competition and the effect on trade limited, so that the overall balance is positive?
- (118) The Commission has already concluded that reductions from surcharges used to finance cogeneration can be considered as aiming at an objective of common interest.³¹ The Commission also notes that the support to cogeneration installations is part of the energy policy implemented by the Greek authorities. It is therefore coherent for Greece to ensure the financing of this measure through a levy imposed on electricity consumption.

3.3.3.1. Objective of Common Interest

- (119) High-efficiency cogeneration is constituted by the energy savings obtained by combined production instead of separate production of heat and electricity. According to Annex II of the Energy Efficiency Directive high-efficiency cogeneration shall fulfil two criteria. Firstly, cogeneration production from cogeneration units shall provide primary energy savings of at least 10% compared with the references for separate production of heat and electricity. Secondly, production from small-scale and micro-cogeneration units providing primary energy savings may qualify as high-efficiency cogeneration.
- (120) HECHP installations financed by ETMEAR comply with the criteria of high-efficiency cogeneration set out in the Energy Efficiency Directive³².
- (121) The Commission notes that the promotion of high efficiency cogeneration is recognised as an objective of common interest since it contributes to the increase of energy efficiency and it reduces CO₂ emissions. In particular, the Commission has already concluded that reductions from electricity charges for the financing of cogeneration can be considered as contributing to an objective of common interest in line with EU energy policy if they are necessary to secure a sufficient financing base for the support measure aiming at the increase of energy efficiency of energy production and the reduction of CO₂ emissions linked to electricity consumption.

³¹ See Commission decisions in case SA.38635 (2014/NN), Reductions of the renewable and cogeneration surcharge for electro-intensive users in Italy; case SA.42393 (2016/C) (ex 2015/N) implemented by Germany for certain end consumers (reduced CHP surcharge) and case SA.36511 (2014/C), Support for EIU under the CSPE in France.

³² See Directive 2012/27/EU of the European Parliament and 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 315 of 14.11.2012, p.1), in particular recital 38.

- (122) Based on those elements, the Commission considers that the notified reductions of the ETMEAR levy component dedicated to the financing of high efficiency cogeneration support can be considered as contributing to a common objective as they are necessary to maintain the ETMEAR levy components in place, thus ensuring support to high efficiency cogeneration and renewables.

3.3.3.2. Need for State intervention, appropriateness of aid, incentive effect, proportionality and no undue distortion of competition

- (123) The Commission observes that if reductions of HECHP surcharges are too high or awarded to too many sectors or electricity consumers, the overall funding of HECHP support might be threatened as well and the public acceptance for cogeneration may be equally hampered. At the same time, distortions of competition and trade may be particularly significant. In order to assess necessity of the reductions the eligibility criteria for reductions from renewable charges can be used as guidance (paragraphs 185-187 of the EEAG).³³ This seems particularly appropriate given that the HECHP support measures that are financed from the ETMEAR levy also serve an environmental objective as the renewable support measures also financed from the ETMEAR levy (fight against climate change by reducing CO₂ emissions resulting from electricity production by increasing energy efficiency). As the ETMEAR is levied in proportion to electricity withdrawn from the grid, it will impact in particular undertakings for which electricity costs represent an important share of gross added value and which cannot easily pass on their costs to consumers without losing important market shares given the intensity of the international trade of the sector in which they are active. Those are the undertakings that the criteria developed under paragraphs 185 to 187 of the EEAG aim at identifying.
- (124) Paragraphs 188 and 189 of the EEAG can also be used as guidance to assess the proportionality of the reductions of HECHP surcharges. This seems particularly appropriate given that the HECHP support measures that are financed from the ETMEAR levy also serve an environmental objective as the renewable support measures also financed from the ETMEAR levy (fight against climate change by reducing CO₂ emissions resulting from electricity production by increasing energy efficiency). In addition, the reductions aim at ensuring the sustainability of the financing of those support measures by limiting the burden for undertakings particularly affected by energy surcharges, while still requiring from them a sufficient own contribution. The criteria set out in paragraphs 188 to 189 of the EEAG aim at defining that equilibrium.
- (125) The Commission notes in this respect that most beneficiaries were electro-intensive users within the meaning of paragraphs 185-187 of the EEAG and that contributed the minimum level required, i.e. 15% of the charge or 0.5% or 4% of the GVA, if applicable (see recital (28) above).
- (126) For beneficiaries who did not qualify as EIUs within the meaning of paragraphs 185-187 of the EEAG or did not contribute to the minimum level required, the

³³ See Commission decision of 24 October 2016 in case SA.42393 (2016/C) (ex 2015/N), Reform of support for cogeneration in Germany, recital 275, and Commission decision of 23 May 2017 in case SA.38635 (2014/NN), Reductions of the renewable and cogeneration surcharge for electro-intensive users in Italy, recital 136.

Greek authorities submitted an adjustment plan that provides for a progressive increase of their own contribution (see section 2.2 above). Undertakings mentioned in point (38)(d) will pay an ETMEAR contribution of at least 20% for all electricity consumption from 1 January 2019. As mentioned in recital (104) above, this is in line with paragraph 197 of the EEAG.

- (127) The adjustment plan is a joint adjustment plan that is common to the reductions granted on the ETMEAR levy for the part used to finance renewable support measures and HECHP support measures. The Commission finds that the adjustment plan is justified for the same reasons for which adjustment plans are provided for under the EEAG for reductions of renewable charges. In particular, the adjustment plan avoids too high and too abrupt financial disruptions for individual undertakings that would result from the immediate application of the criteria set out in paragraphs 185 to 189 of the EEAG and in that sense also contributes to the sustainability of the financing of the HECHP support as described under recital (118) above by maintaining acceptability of support and its continued secured financing.
- (128) The Commission finds that the starting point of the adjustment plan in 2011 is justified. Indeed in June 2010 the European Council agreed upon a 20% energy efficiency target to be reached by 2020. In the course of 2010 and 2011, the EU adopted several Action Plans and Communications³⁴ stressing the importance of energy efficiency and the need to step up efforts, including in energy generation and including through schemes, to increase energy efficiency. This together with the Energy Efficiency Directive induced Member States to step up support measures and surcharges started to increase as a result.

³⁴

See Conclusions of the European Council of 17 June 2010. The Conclusions of the European Council of 17 June 2010 confirmed the energy efficiency target as one of the headline targets of the Union's new strategy for jobs and smart, sustainable and inclusive growth. Under this process and in order to implement this objective at national level, Member States are required to set national targets in close dialogue with the Commission and to indicate, in their National Reform Programmes, how they intend to achieve them. See also Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Energy 2020 - A Strategy for competitive, sustainable and secure energy (COM(2010) 639 final of 10.11.2010). It places energy efficiency at the core of the Union energy strategy for 2020 and outlines the need for a new energy efficiency strategy that will enable all Member States to decouple energy use from economic growth. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: See also Conclusions of the European Council of 4 February 2011 acknowledging that the Union energy efficiency target was not on track and that determined action is required to tap the considerable potential for higher energy savings in buildings, transport, products and processes. See also Communication of 8 March 2011 from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Energy Efficiency Plan 2011. The Communication confirmed that the Union is not on track to achieve its energy efficiency target. To remedy that, the Energy Efficiency Plan 2011 spelled out a series of energy efficiency policies and measures covering the full energy chain, including energy generation of heat and electricity and underlying that waste heat should be recovered where possible and a greater use of high efficient cogeneration should be made where possible.

- (129) For the reductions of the ETMEAR levy used to finance HECHP support measures applied prior to the starting date of the adjustment plan, the Commission considers that in light of the development state of HECHP (period prior to the establishment of 20% EU-energy efficiency target) the amounts of reductions awarded before 2011 may be considered as not fulfilling all the criteria in Article 107(1) TFUE and thus falling under the Regulations³⁵ adopted pursuant to Article 2 of Council Regulation (EC) No 994/98 which were applicable at the time (*de minimis* aid).

3.3.3.3. Conclusions

- (130) Based on the elements above, including the adjustment plan committed to, the Commission concludes that the Greek authorities demonstrated that the reductions of the HECHP surcharge are necessary, appropriate, have an incentive effect, are proportionate and do not unduly distort competition and are thus compatible with Article 107(3)(c) TFEU.

3.4. Duration

- (131) The duration of the scheme is limited to 10 years, in line with paragraph (169) of the EEAG.

3.5. Transparency

- (132) The Greek authorities have committed to respect the transparency requirements set out in paragraph 104 to 106 of the EEAG.

3.6. Complaints

- (133) The Commission considers that the existing scheme constitutes State aid for the reasons laid down in Section 3.1 above. In particular, the Commission finds that the existing scheme provided a selective advantage to undertakings connected at high voltage and, from 2014, also to undertakings connected at medium voltage. In addition, the Commission finds that the annual cap was specifically designed to provide a selective advantage to very large electricity consumers, as opposed to other consumers. Furthermore, the Greek authorities implemented the existing scheme in advance of a Commission decision on its compatibility, in breach of the standstill obligation set out in Article 108(3) TFEU.

³⁵ Commission notice on the *de minimis* rule for State aid (OJ C 68, 6.3.1996, p. 9), Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid (OJ L 10, 13.1.2001, p. 30), or Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid (OJ L 379, 28.12.2006, p. 5), read in light of Temporary Community Framework for State aid measures to support access to finance in the current financial and economic crisis (OJ C 83, 7.4.2009, p.1), for the period from December 2008 until December 2010.

- (134) On the compatibility of the existing scheme, the Commission found the aid granted under the existing scheme before 1 January 2019 compatible because it complies with an adjustment plan in line with Section 3.7.3. of the EEAG for the reasons laid down in Section 3.3.2 above. In particular, the Commission recalls that targeted reductions may be needed to secure a sufficient financing base for support to energy from renewable sources and high efficiency cogeneration, and hence help reaching the targets set at EU level by the energy policy of the European Union.

4. CONCLUSION

The Commission regrets that the Greek authorities put the aid measures in question into effect, in breach of Article 108(3) of the Treaty on the Functioning of the European Union.

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) of the Treaty on the Functioning of the European Union.

Yours faithfully
For the Commission

Margrethe VESTAGER
Member of the Commission