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**Subject: State Aid SA.103196 (2023/N) – Germany
Amendment to aid schemes SA.42393 (2016/C) - Reduced CHP
surcharge for energy intensive users; and
State Aid SA.49416 (2017/N) – Reduced offshore surcharge for
electro-intensive undertakings**

Excellency,

1. PROCEDURE: NOTIFICATION, CORRESPONDENCE, DEADLINE ETC.

- (1) By decision of 23 May 2017 in SA.42393 (2016/C) (ex 2015/N) on the aid schemes implemented by Germany for certain end consumers (reduced CHP surcharge) (the “first initial Decision”), the European Commission (“Commission”) approved, among other things, reductions for certain end consumers from the electricity surcharge imposed to finance the support high-efficiency cogeneration (the “first initial scheme”). By decision of 3 June 2021 in SA.56826 (2020/N), the Commission approved, among other things, an amendment to the first initial scheme (“Decision SA.56826”).
- (2) By decision of 27 March 2018 in SA.49416 (2017/N) – reductions of the offshore surcharge for electro-intensive undertakings and reductions on the CHP surcharge for electricity produced from waste gases (the “second initial Decision”), the Commission approved, among other things, a support scheme on reductions for electro-intensive users (‘EIUs’) of the electricity surcharge financing the costs of connecting offshore wind installations to the electricity grid (the “second initial scheme”).
- (3) Following prenotification contacts, on 7 December 2023 the German authorities notified amendments to the first and second initial schemes (the “initial schemes”), in accordance with Article 108(3) of the Treaty on the Functioning of

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the European Union (“TFEU”), with the aim to (i) merge and extend in time the support provided under the initial measures and (ii) bring the initial schemes in line with the Guidelines on State aid for climate, environmental protection and energy 2022¹ (“CEEAG”).

- (4) Germany exceptionally waived its right under Article 342 of the TFEU in conjunction with Article 3 of EC Regulation No 1/1958 to have the decision adopted and notified in German and agreed that the decision be adopted and notified in English.

2. DESCRIPTION OF THE SCHEME

2.1. The first initial scheme (SA.42393 and SA.56826)

- (5) In the first initial Decision, the Commission concluded that the reduction from the electricity surcharge imposed to finance the support high-efficiency cogeneration (reduced CHP surcharge), as amended by the Law of 22 December 2016 and as complemented by the adjustment plan are compatible with the internal market (see recital 168 of the first initial Decision).
- (6) The legal basis of the first initial scheme consists of (i) the Combined Heat and Power Generation Act (*Kraft-Wärme-Kopplungsgesetz*, 'the KWKG 2016, as notified')⁽²⁾ and (ii) the Law of 22 December 2016 (*Gesetz zur Änderung der Bestimmungen zur Stromerzeugung aus Kraft-Wärme-Kopplung und zur Eigenerzeugung*) which amends the provisions governing the CHP surcharge and the reductions of the CHP surcharge for certain end consumers (the “KWKG 2016, as amended”).
- (7) Following the Law of 22 December 2016, the reduced CHP surcharge is granted only to EIUs that have been granted a reduction of the surcharge under the *Erneuerbare-Energien-Gesetz*⁽³⁾ (“EEG”) and therefore meet a number of conditions (see recital (20) of the first initial Decision), including the following ones:
- (a) the undertaking must belong to one of the sectors listed in Annex 4 to the EEG;
 - (b) the electricity that is subject to the EEG surcharge and that has been used by the undertaking itself was at least 1 GWh in the last financial year at the consumption point concerned;
 - (c) the electro-intensity of the undertaking reaches certain levels, depending on their sector of operation.

⁽¹⁾ OJ C 80, 18.2.2022, p.1.

⁽²⁾ The KWKG 2016 (as notified and as amended) aims at improving the energy efficiency of energy production in Germany by increasing the net electricity production from CHP installations to 110 TWh/year by 2020 and to 120 TWh/year by 2025.

⁽³⁾ Published in the German Official Gazette on 24 July 2014 (BGBl I 2014 N°33, p. 1066).

- (d) the undertaking must have a certified energy or environmental management system in place. If it consumes less than 5 GWh, it can use alternative systems of improvement of the energy-efficiency.
- (8) For an undertaking fulfilling those conditions, the CHP surcharge is paid in full for consumption up to 1 GWh, while for consumption above this level the CHP surcharge is capped at 15 % of the full CHP surcharge (recital (21) of the first initial Decision).
- (9) However, the total amount of the surcharge is limited for all consumption points benefitting from a reduction to the following percentages applied to the gross value added (GVA) of the undertaking (recital (22) of the first initial Decision):
 - (a) 0.5 % of the GVA for undertakings reaching at least 20 % of electro-intensity;
 - (b) 4 % of the GVA for undertakings having an electro-intensity below 20 %.
- (10) In any event, the reduction of the CHP surcharge resulting from the caps may not result in an amount that is lower than 0.03 EUR ct./kWh for the electricity above 1 GWh (recital (23) of the first initial Decision).
- (11) The first initial scheme is in force since 1 January 2017. The German authorities committed to renotify the reductions of the CHP surcharge at the latest 10 years from the date of adoption of the first initial Decision (see recitals (39) of the first initial Decision).
- (12) By Decision SA:56826, the Commission approved, among other things, an amendment to the first initial scheme that concerns undertakings belonging to the sector ‘manufacture of industrial gases’ in which the production of hydrogen contributes to the majority of their total value added (“hydrogen producers”, see recital (144) of Decision SA.56826). For those beneficiaries, the first GWh of annual electricity consumed is taken into account to establish reductions on the CHP surcharges (see recitals (145) and (146) of Decision SA.56826).

2.2. The second initial scheme (SA.49416)

- (13) By decision of 27 March 2018 in SA.49416 (the second initial Decision), the Commission approved, among other things, the German scheme to grant reductions for EIUs of the electricity surcharge financing the costs of connecting offshore wind installations to the electricity grid (“reduced offshore surcharge”).
- (14) The legal basis of the scheme consists of (i) the German Energy Act, Paragraph 17f (5) 2nd sentence (‘Energiewirtschaftsgesetz’, hereinafter, EnWG), read in conjunction with Paragraphs 27-28, 30 of (ii) the Combined Heat and Power Act (‘Kraft-Wärme-Kopplungsgesetz’, hereinafter, KWKG), which refer to the principles established by (iii) the EEG as regards reductions of the EEG-surcharge for electro-intensive undertakings.
- (15) The scheme provides that the offshore surcharge is reduced for EIUs that have been granted a reduction of the EEG surcharge and therefore meet the following criteria:

- (a) The undertaking concerned can be classified at the consumption point concerned in one of the sectors of Annex 4 to the EEG;
 - (b) The undertaking has consumed at the consumption point concerned at least 1 GWh of electricity that is subject to the EEG and CHP surcharge in the last financial year;
 - (c) The electro-intensity of the undertaking reaches certain levels, depending on their sector of operation.
 - (d) The undertaking must have a certified energy or environmental management system in place. If it consumes less than 5 GWh, it can use alternative systems to improvement its energy-efficiency.
- (16) For an undertaking fulfilling the aforementioned conditions, the offshore surcharge paid on the electricity consumed exceeding 1 GWh is reduced by analogy to Paragraph 64 (2) no. 2 of the EEG as follows:
- (a) Undertakings active in a sector listed in list 1 of Annex 4 to the EEG with an electro-intensity of more than 14 % pay a maximum offshore surcharge corresponding 20 % of the normal surcharge;
 - (b) Undertakings referred to under (a) having an electro-intensity of more than 17 % pay a maximum offshore surcharge corresponding 15 % of the normal surcharge;
 - (c) Undertakings active in a sector listed in list 2 of Annex 4 to the EEG with an electro-intensity of more than 20 % pay a maximum offshore surcharge amounting to 15 % of the normal surcharge.
- (17) However, the reduction of the offshore surcharge cannot go below a minimum contribution of 0.03 EUR ct./kWh ((recitals (14) to (17) of the second initial Decision).
- (18) The second initial scheme is in force since 1 January 2019, and the German authorities have committed to re-notify it at the least after 10 years from the date of adoption of the second initial Decision (see recital (25) of the second initial Decision).

2.3. The notified amendments

- (19) The notified amendments to the initial schemes bring them under one single scheme (“the amended scheme”). For this purpose, the provisions regulating the granting of reduced CHP and offshore surcharges (hereafter also called “levies”) have been incorporated into the Energy Financing Act ⁽⁴⁾ (EnFG), Section 4, Subsections 1 to 3, and Section 7 (point 67), which constitutes the legal basis for the amended scheme.
- (20) The German authorities note that the EnFG merges in one law the financing systems of energy policy measures, which in the past were scattered across

⁽⁴⁾ Energy Financing Act of 28 July 2022, BGBl. I 1237

several laws. Apart from the amended scheme, all the other schemes provided in the EnFG are not object of the notification and fall outside of the scope of this decision.

- (21) According to German authorities, the main objective of the amended scheme is to reduce the risk of relocation of eligible undertakings due to high levies on electricity consumption financing energy and environmental policy objectives, namely promotion of high-efficiency cogeneration and deployment of offshore wind electricity. The German authorities note that this risk could also lead to a decrease in funding for those energy and environmental policies.
- (22) The amount of the CHP and offshore levies is determined annually by the transmission system operators. Similarly, aid is granted annually on the basis of aid applications (“the application year”). In each application year t , the granting authority verifies the eligibility of the applicants and the other conditions, and, on that basis, it grants aid under the amended scheme in the form of reduced levies charged on the electricity consumed in the year that follows the application year ($t+1$). The levies apply to all electricity network withdrawals in the territory of the Federal Republic of Germany, irrespective of whether the electricity is produced domestically or abroad.
- (23) In 2023, the CHP levy amounted to 3.57 EUR/MWh while the offshore levy amounted to 5.91 EUR/MWh, for a total of 9.48 EUR/MWh. The German authorities note that estimating future levels of these levies entails significant uncertainties, however a tentative estimation given by the consultancy company Prognos AG and provided by Germany points at a progressive increase in the combined level of those levies to 16.4 EUR/MWh by 2033, mainly due to a significant forecasted increase in the level of the offshore levy.
- (24) The German authorities have also shown based on the aforementioned testimony that, in the 2023-2033 period, in the absence of the scheme the full amount of CHP and offshore levies for EIUs would account for, on average, 19.8 % of their total electricity levies, taxes and tariffs, and on average 9.1 % of their overall electricity costs. Aid under the amended scheme is expected to reduce overall EIUs electricity costs by 0.7 %-5.9 % in 2024 and by 0.9 %-9.4 % in 2033 (depending on the specific beneficiary).
- (25) The notified amendments to the initial schemes relate to the following areas:
 - (a) The amended scheme extends the application of the reduced CHP and offshore levies for a period of 10 years from the adoption of this decision, and it updates the budget accordingly.
 - (b) The amended scheme modifies the conditions for granting reduced CHP and offshore levies in order to bring them in line with the CEEAG for aid granted as of 1 January 2024 (see recital (27)).
- (26) Due to the high degree of uncertainty, the German authorities presented the estimated budget as a range between two scenarios, minimum and maximum ⁽⁵⁾,

⁽⁵⁾ The electricity consumption in the minimum scenario is assumed to remain constant at 98.7 TWh until 2033, and in the maximum scenario is expected to gradually increase to 130 TWh by 2033.

with an estimated average budget of approximately EUR 13 billion by 2033 (see detail in Table 1).

Table 1 - Estimated budget by 2030 (min and max scenario)

	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	Total
Min (million EUR)	808	914,8	974,1	1.030	1.090	1.200	1.320	1.300	1.260	1.230	11.127
Max (million EUR)	810,8	948,7	1.040	1.140	1.240	1.430	1.630	1.600	1.560	1.550	12.950

- (27) For the purpose to align the conditions for granting reduced CHP and offshore levies to the CEEAG, the features of the initial schemes described in the initial Decisions remain unchanged, except for the following areas:
- (a) Eligibility requirements (See section 2.3.1)
 - (b) Methods for calculating maximum individual aid amounts (See section 2.3.2)
 - (c) Establishment of a transitional plan (See section 2.3.3)
- (28) The German authorities confirmed that all levy reductions falling within the scope of Section 4.11 of CEEAG in Germany are covered by the amended scheme, and that future levy reductions within such scope will be notified as a new amendment to the amended scheme.
- (29) The German authorities confirmed that the amended scheme does not by itself, or by the conditions attached to it or by its financing method, constitute a non-severable violation of Union law.
- (30) The German authorities confirmed that, in line with article 68 of the EnFG, the amended scheme will be put into effect only after the notification of the Commission's decision and that, except for the notified amendments, all other provisions of the initial scheme remain unchanged.

2.3.1. Eligibility requirements

- (31) Under the amended scheme, eligibility is limited to undertakings that operate in a sector listed in Annex 2 to the EnFG ⁽⁶⁾. The list of eligible sectors under the amended scheme replicates the sector list of Annex 1 to the CEEAG, which lists

⁽⁶⁾ Proven through the classification of the undertaking by the statistical offices of the Länder in application of the classification of economic activities of the Federal Statistical Office (see article 32(1)(d) of the EnFG).

“sectors at significant risk” and “sectors at risk” of relocation to jurisdictions where environmental disciplines are absent or less ambitious.

- (32) The amended scheme removes the requirements to have a certain level of electro-intensity at the level of undertaking (see recitals (7)(c) and (15)(c)).
- (33) The amended scheme maintains that, in order to be eligible, an EIU shall demonstrate that:
- (a) Except in the case of hydrogen producers (see recital (12)), in the last financial year it has consumed at the consumption point concerned at least 1 GWh of electricity that is subject to the offshore and CHP levies.
 - (b) It operates an energy management system.
- (34) Furthermore, the amended scheme introduces the requirement for beneficiaries to comply with one of the following three conditions:
- (a) The beneficiary demonstrates to be energy efficient.
 - (b) The beneficiary covers at least 30 % of its electricity consumption through non-subsidised electricity from renewable energy sources (RES electricity).
 - (c) The beneficiary has invested a certain minimum share of the levy reductions to substantially decarbonise the production process. For those operating in sectors covered by the Commission Delegated Regulation (EU) 2019/331 ⁽⁷⁾, the investment shall reduce the greenhouse gas emissions to a level well below the relevant product benchmarks.
- (35) The condition of recital (34)(a) is complied with if, as proven through a self-declaration certified by an independent auditor, one of the following conditions is met:
- (a) The beneficiary has implemented all economically feasible measures concretely identified in its energy management system. A measure is considered economically feasible if it has a positive net present value (“NPV”) when accounting for 60 % (for application years 2023 to 2025) or 90 % (from application year 2026 onwards) of its expected useful life.
 - (b) No economically feasible measures are concretely identified in the energy management system of the beneficiary.
 - (c) In the year preceding the aid application, the beneficiary has invested a certain minimum share of the levy reductions in measures concretely identified in its energy management system. This minimum share evolves over time as follows:

⁽⁷⁾ Commission Delegated Regulation (EU) 2019/331 of 19 December 2019 on December 2018 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council (OJ L 59, 27.2.2019, p. 8).

- for the application year 2023: 50 % of the aid granted in that application year.
- for the application year 2024: 80 % of the aid granted in that application year.
- for the application year 2025: 100 % of the aid granted in that application year.
- for the application years 2026 onwards: 100 % of the aid granted two years before the application year.

For investments exceeding those thresholds, the difference may be counted towards the required investment in the following four yearly aid applications. Investment amounts that have been used to meet the aid granting conditions under a different measure shall not be eligible.

(36) With regard to the methodology for the determination of economically feasible measures described in recital (35)(a), the German authorities note that, overall, it considers as economically feasible measures with a longer payback period than the payback period not exceeding three years, which is provided in paragraph 415(a) of the CEEAG. In particular:

- (a) A positive NPV at 60 % of expected useful life entails that, for measures with a useful life of five years (or more), the methodology is equivalent to (or more stringent than) considering economically feasible measures with a payback of three years.
- (b) A positive NPV at 90 % of expected useful life entails that, for measures with a useful life of 40 months (or more), the methodology is equivalent to (or more stringent than) considering economically feasible measures with a payback of three years.

(37) In addition, the German authorities have provided evidence that measures with an intended useful life of five years or less are not usual in Germany’s operational practice. In Germany, the data from the energy audits are summarised in the OREA database of the Federal Office of Economics and Export Control, which shows that the average useful life of energy efficiency measures is around 15 years and is well above five years in all of the differentiated groups of measures (see table 2).

Table 2 - Average lifespan of energy efficiency measures in Germany

Groups of measures	Average useful life (years)
Waste heat use/WRG	14,22
Alternative system	11,13
Drives, electric motors	13,19
Lighting	12,74
Compressed air	11,95

Energy services	11,56
Renewables	19,44
Building envelope	32,59
Heating system	16,77
ICT	7,36
Cooling system installation:	14,76
Cogeneration	13,66
Ventilation and air conditioning	14,73
Organisational matters	7,24
Production processes/installations	13,85
Pumps	13,86
Other measures	15,75
Transport	9,97
Average across groups	15,27

- (38) Compliance with recital (34)(b) is demonstrated as follows:
- (a) In case of electricity consumed through the public grid, proof that guarantees of origin for renewable energy have been cancelled for the relevant consumed amount ⁽⁸⁾.
 - (b) In the case of electricity not consumed through the public grid, proof that produced RES electricity meets electricity consumption in relation to each 15-minute interval.
- (39) The condition of recital (34)(c) is met if the beneficiary has invested at least 50 % of the levy reductions granted two years before the aid application in measures to decarbonise its production process. For investments exceeding the 50 % threshold, the difference may be counted towards the required investment in the following four yearly aid applications. Investment amounts that have been used to meet the aid granting conditions under a different measure shall not be eligible. Compliance with these requirements is demonstrated through a self-declaration, certified by an independent auditor and attesting the amount of investments made, the measures put in place for the reduction of direct emissions from the installation, and the emission reductions achieved.
- (40) For the application years up to and including 2025, the requirement foreseen in recital (34)(c) and (35)(c) also fulfilled if the applicant commits to make the relevant investments in the future. Those investments need to be demonstrated within four years from the first relevant aid application where such commitment was made, in line with recital (38)(38). Failure to demonstrate compliance with the commitments within the deadline will entail complete repayment of the aid received.

⁽⁸⁾ In accordance with Article 30 of the Ordinance on the Implementation of Origin and Regional Proof of Origin.

- (41) The EnFG provides that the aid granted under the amended scheme is not awarded to:
- (a) Undertakings in difficulty as defined by the Commission Guidelines on State aid for Rescuing and restructuring non-financial undertakings in difficulty ⁽⁹⁾.
 - (b) Undertakings with outstanding claims for recovery against them on the basis of a decision of the European Commission declaring aid to be unlawful and incompatible with the European internal market.

2.3.2. *Methods for calculating maximum individual aid amounts*

- (42) The amended scheme provides that the maximum aid intensity will be 85 % of the levies charged on beneficiaries operating in sectors at significant risk and 75 % of the levies charged on beneficiaries operating in sectors at risk.
- (43) Without restrictions among beneficiaries, the maximum aid intensities may exceed the limits of recital (42) through the establishment of amended GVA caps (see recital (9)). The amended GVA cap at the consumption points concerned is equal to (i) 0.5 % of the related GVA for undertakings operating in sectors at significant risk and (ii) 1 % of the related GVA for undertakings operating in sectors at risk. The resulting aid amount will not exceed the aid resulting from capping the cost of the levies at undertaking level to respectively, 0.5 % and 1 % of the GVA of the concerned undertaking ⁽¹⁰⁾.
- (44) The German authorities confirm that, in order to determine aid amounts in line with recital (43), the GVA at factor costs, which is the GVA at market prices less any indirect taxes plus any subsidies, will be used. GVA at factor cost can be calculated from turnover, plus capitalised production, plus other operating income, plus or minus changes in stocks, minus purchases of goods and services ⁽¹¹⁾, minus other taxes on products that are linked to turnover but not deductible, minus duties and taxes linked to production. Alternatively, GVA at factor cost can be calculated from gross operating surplus by adding personnel costs. Income and expenditure classified as financial or extraordinary in company accounts are excluded from the value added. The value added at factor costs is calculated at gross level, as value adjustments (such as depreciation) are not subtracted.
- (45) To determine aid amounts in line with recital (43), for aid granted as of the application year 2024 the GVA used will be based on the arithmetic average of the last three financial years for which accounts have been closed.

⁽⁹⁾ 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).

⁽¹⁰⁾ For application year 2023, the GVA cap will be equal to (i) 0.5 % in case of undertakings operating in sectors at significant risk and (ii) 1 % in case of undertakings operating in sectors at risk.

⁽¹¹⁾ ‘Goods and services’ do not include personnel costs.

- (46) Except in the case of hydrogen producers (see recital (12)), the levy reductions and the GVA caps described in recitals (42)-(43) apply only to the annual electricity consumption above 1 GWh.
- (47) For undertakings operating in sectors at risk, aid may be increased to the levels of those operating in sectors at significant risk provided that, in the year preceding the aid application, the beneficiary demonstrates in line with recital (38) that it meets the following cumulative requirements:
- (a) It covers at least 50 % of its electricity consumption from non-subsidised renewable energy,
 - (b) It covers at least 5 % of its electricity consumption from non-subsidised renewable energy that is procured through a direct contractual relationship, or it covers at least 2.5 % of its electricity consumption with renewable energy generated on or within a 10 km radius of its purchasing point.
- (48) Notwithstanding the conditions described in recitals (42)-(47), Article 31(4) of the EnFG provides that the granting of aid must not result in reduced levies below 0.5 EUR/MWh. For this purpose, the full levies paid on the first GWh of consumption shall not be taken into account ⁽¹²⁾.
- (49) The aid is granted in the form of ex ante levy reductions within the meaning of paragraph 413 of the CEEAG. Under Article 52 of the EnFG, undertakings benefitting from the reduced levies are obliged to provide to the transmission system operator, at the latest by 31 May of the year following the reduction of the levies, the necessary information to monitor the aid granted, including the volumes of electricity supplied through the grid and broken down to each consumption point. On this basis, the obligation to pay the levy is determined on the basis of the actual consumption of electricity, thus correcting any overpayment of aid before 1 July of the year following the reduction of the levies. The German authorities explained that, if the conditions giving right to reduced levies ceased to exist during the year, the right to aid is immediately withdrawn with retroactive effect, and the obligation to pay the unreduced levies is immediately due.
- (50) The German authorities declare that aid under the amended scheme cannot be cumulated with individual aid ⁽¹³⁾ or de minimis aid in relation to the same eligible costs.
- (51) Germany confirms that they will ensure the transparency of aid granted by publishing certain information on a comprehensive State aid website and availability of the data for at least 10 years from the date on which the aid was granted. The relevant data of the amended scheme will be published on transmission system operators' websites in line with Article 51 of the EnFG.

⁽¹²⁾ Except in the case of hydrogen producers, for which reduced levies apply to the first GWh of consumption.

⁽¹³⁾ As defined in point 19(50) of the CEEAG.

Germany confirms that the general public has access to the website without restrictions and no prior user registration is required to access the website.

2.3.3. *Establishment of a transitional plan*

- (52) To avoid disruptive changes in the levy burden for individual undertakings that would not meet the amended eligibility conditions, the amended scheme sets out transitional rules for the levies applicable in the years 2024-2028, according to which certain EIUs that are not eligible under the amended scheme may be entitled, for their annual electricity consumption above 1GWh, to a reduced CHP and offshore levies on the basis of the table below.

	2024-2026	2027	2028
Levy reduction	65 %	45 %	20 %
GVA cap ⁽¹⁴⁾	1.5 %	2.5 %	3.5 %

- (53) The transitional plan will be limited to the EIUs that meet the following cumulative requirements:
- (a) On the basis of the initial schemes, they have obtained the right to reduced CHP and offshore levies for 2022 or 2023.
 - (b) They operate in a sector listed in Annex 4 of the EEG.
 - (c) They do not operate in a sector listed in Annex 2 of the EnFG.
 - (d) They comply with the requirements of recitals (33) and (34).
- (54) Beneficiaries eligible under the transitional plan which demonstrate that they cover their consumption with RES electricity in line with recital (47) are entitled to the aid intensities applicable in 2024-2026 throughout the entire period of the transitional plan.

2.3.4. *Evaluation plan*

- (55) On 1 June 2023, the Commission requested Germany to submit an evaluation plan, considering the long duration of the amended scheme and its large budget. The German authorities have submitted an evaluation plan on 1 December 2023. The main elements of the evaluation plan are described below.
- (56) The evaluation plan notified by the German authorities describes the objectives of the amended scheme subject to evaluation and includes evaluation questions in order to assess its direct and indirect effects, as well as the proportionality of the aid and the appropriateness of the chosen aid instrument.

⁽¹⁴⁾ The application of the GVA cap follows the methodology described in recitals (43)-(45).

- (57) The evaluation plan contains guiding evaluation questions regarding target achievement, impact monitoring and efficiency. Therefore, the evaluation will provide general information, in particular, on whether the amended scheme achieves its objectives and how the climatic and economic impact and the economic efficiency of the amended scheme are to be assessed.
- (58) For the purpose of evaluation of the amended scheme, the German authorities will use several result indicators. Due to complex economic interrelationships, the evaluation plan highlights that risk of relocation and can hardly be quantified.
- (59) The evaluation plan underlines that due to very complex economic interrelationships relocation cannot be quantitatively determined by the econometric methods usually used for assessing the causal impact of State aid programmes. Therefore, it will be analysed whether there were any closures of companies in the eligible sectors during the period under review.
- (60) In the course of the evaluation process, the extent to which analytical methods can be deployed will be examined. The evaluation plan presents different methods and discusses in detail the feasibility in the current context. The main difficulties derive from both the absence of a control group and of a pre-treatment period.
- (61) The evaluation will be based on a wide range of data at EU and national level from public sources, including Eurostat, Destatis as well as non-public data on the different aid beneficiaries collected during the application process from the Federal Office for Economic Affairs and Export Control. The evaluation plan will also assess to what degree micro data can be used for potential micro-econometric evaluation methods.
- (62) The German authorities have committed to assess the effectiveness of the scheme with counterfactual or other suitable impact evaluation methods. Furthermore, committed to submit a revised version of the evaluation plan, taking into account the methodological comments provided by DG COMP and the European Commission's Joint Research Centre on 13 December 2023 and the early evidence concerning the implementation of the amended scheme, as part of a first interim report within 24 months after the adoption of the Commission's decision approving the amended scheme. The first interim report, due in 2025, will be a refinement of the evaluation plan, which will take into account the methodological comments, refine the evaluation questions, contain descriptive statistics on the implementation of the scheme up to the moment and provide details on the methodology to be used for the evaluation, possibly based on an initial assessment based on the available data.
- (63) In addition, Germany commits to submit a second interim report in 2030 with preliminary results of the evaluation based on the available data. It will also include descriptive statistics of the aid paid in the previous years under the amended scheme and the initial schemes (including the available information on the indicators suggested). The final evaluation report will be submitted to the Commission at the latest nine months before the expiry of the amended scheme. In case Germany fails to submit the final evaluation report in due time and is not of sufficient quality, the amended scheme will be suspended. Germany further confirms that it will communicate to the Commission any difficulty that could significantly affect the agreed evaluation in order to work out possible solutions.

- (64) For the purpose of ensuring the quality and reliability of the evaluation, the evaluation will be conducted by an external independent evaluator. Germany aims to select the evaluator through an open tender procedure in 2024. The selection criteria will be the independence, experience and economic and methodological knowledge necessary to conduct a comprehensive and reliable evaluation.
- (65) The interim reports and the final evaluation report will be published on the website of the Federal Ministry for Economic Affairs and Climate Action (“BMWK”). Personal and/or confidential data will be used in accordance with the relevant regulations. The published results of the evaluation will comply with provisions of the German statistical law and statistical secrecy. Access to third-party data will be subject to the rules imposed by these third-party bodies. Data collected during the evaluation process will be made accessible for the purpose of replicating results or for further studies.

3. ASSESSMENT OF THE SCHEME

3.1. Existence of the State aid

- (66) The Commission already concluded in its initial Decisions that the initial schemes constitute State aid within the meaning of Article 107(1) TFEU (see recitals (80) to (115) of the first initial Decision and recitals (44) to (60) of the second initial Decision). The notified amendments do not alter this conclusion. Therefore, the amended scheme constitutes State aid within the meaning of Article 107(1) TFEU.

3.2. Lawfulness of the aid

- (67) The initial schemes have been approved by the Commission until 1 January 2027 and 1 January 2029, respectively (see recitals (11) and (18)). Germany has notified amendments that incorporate both schemes under new legal basis, into Section 4, Subsections 1 and 2 of the EnFG. The amended scheme will be put into effect only after the notification of the Commission’s decision (see recital (30)). Germany therefore complies with the stand-still obligation set out in Article 108(3) TFEU.

3.3. Compatibility of the aid

3.3.1. Legal basis for assessment

- (68) Article 107(3)(c) TFEU provides that the Commission may declare compatible ‘aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest’. Therefore, compatible aid under that provision of the Treaty must contribute to the development of certain economic activity⁽¹⁵⁾. Furthermore, the aid should not distort competition in a way contrary to the common interest.

⁽¹⁵⁾ Judgment of 22 September 2020, *Austria v Commission*, C-594/18 P, EU:C:2020:742, paragraphs 20 and 24.

- (69) In addition, the CEEAG, which specifies in its point 16(l) that “*aid in the form of reductions from electricity levies for energy-intensive users*” lay down specific compatibility conditions for the compatibility of such aid.
- (70) The Commission notes that the modified scheme aims at reducing the electricity levies for EIUs. The Commission has evaluated the amended scheme as support for EIUs under the specific compatibility criteria for aid in the form of reduction from compensable levies for EIUs, laid out in Section 4.11 of the CEEAG, which sets out the criteria for assessing the development of an economic activity, incentive effect, necessity, appropriateness, proportionality and competition impact of the aid, as well as the applicable general compatibility provisions in CEEAG Section 3.

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

3.3.2.1. Development of and economic activity and incentive effect

- (71) Article 107(3)(c) TFEU provides that the Commission may declare compatible “aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest”. Therefore, compatible aid under that provision of the Treaty must contribute to the development of certain economic activity ⁽¹⁶⁾.
- (72) Furthermore, State aid can only be considered to facilitate an economic activity if it has an incentive effect. An incentive effect occurs when the aid induces the beneficiary to change its behaviour towards the development of an economic activity pursued by the aid, and if this change in behaviour would otherwise not occur without the aid ⁽¹⁷⁾.
- (73) Point 400 of the CEEAG sets out that “[f]or certain economic sectors which are particularly exposed to international trade and rely heavily on electricity for their value creation, the obligation to pay the full amount of levies on electricity consumption which finance energy and environmental policy objectives can heighten the risk of activities in these sectors moving outside the Union to locations where environmental disciplines are absent or less ambitious. In addition, such levies increase the cost of electricity compared to the cost of direct emissions resulting from recourse to other energy sources and can therefore discourage the electrification of production processes, which is central to the successful decarbonisation of the Union economy. To mitigate those risks and adverse impacts on the environment, Member States can grant reductions from such levies for companies active in the economic sectors concerned”.
- (74) Point 404 of the CEEAG states that the location decision of the undertakings and the associated adverse environmental impact are dependent on the overall combined financial effect of levies from which reductions can be granted.

⁽¹⁶⁾ See judgment in case C-594/18 P, *Austria v Commission*, EU:C:2020:742, paragraphs 20 and 24.

⁽¹⁷⁾ See in that sense Section 3.1.2 of the CEEAG, as well as the *Hinkley* judgment (C-594/18 P, *Austria v Commission*, EU:C:2020:742, paragraphs 20 and 24).

Therefore, Member States have to include all such reductions in a single scheme and to inform the Commission of the cumulative effect of all eligible levies and all reductions proposed.

- (75) In the initial Decisions, the Commission concluded that the initial scheme facilitates the development of an economic activity as, in the absence of the proposed scheme, the economic consequences for EIUs with a high electro-intensity and exposure to international trade may lead to a bankruptcy or a shift of production towards other regions outside the EU. This may also erode the financing basis of the CHP and offshore levies (see recitals (123) to (130) of the first initial Decision and recitals (64) to (71) of the second initial Decision).
- (76) The amendments to the initial schemes do not alter those conclusions that the scheme at issue facilitates the development of an economic activity.
- (77) In particular, the main objective of the amended scheme remains the reduction of the risk of relocation of eligible undertakings due to high levies on electricity consumption financing energy and environmental policy objectives (recital (21)). In addition, as explained in recital (31), the amended scheme applies only to economic sectors listed in Annex 1 to the CEEAG, which are particularly exposed to international trade and that rely heavily on electricity for value creation.
- (78) Moreover, in line with point 404 of the CEEAG:
 - (a) The German authorities have informed the Commission of the cumulative effect of all eligible levies and all reductions proposed (see recital (24)), showing that, in the absence of the scheme, the economic burden of the full CHP and offshore levy on the targeted undertakings would be significant. The amended scheme thus reduces the risk, compared to the counterfactual scenario, that the burden stemming from the CHP and offshore levies entails the relocation of the targeted undertakings to areas or countries where these costs are not incurred at all or are not at such an intensity.
 - (b) The German authorities confirmed that all levy reductions to be granted on the basis of Section 4.11 of the CEEAG are covered by the amended scheme, and that possible future levy reductions falling within the scope of this section will be notified as a further amendment to the amended scheme (see recital (28)), in line with point 404 of the CEEAG.

3.3.2.2. No breach of any relevant provision of Union law

- (79) According to point 33 CEEAG, if the supported activity, or the aid scheme or the conditions attached to it, including its financing method when it forms an integral part of the scheme, entail a non-severable violation of relevant Union law, the aid cannot be declared compatible with the internal market.
- (80) In the present case, Germany confirmed that the amended scheme does not by itself, or by the conditions attached to it or by its financing method, constitute a non-severable violation of Union law (see recital (29)).
- (81) Based on the information provided by the German authorities, the Commission has no indications of a possible breach of any relevant provision of Union law

that would prevent the amended scheme from being declared compatible with the internal market. Therefore, the Commission considers that the requirements of point 33 CEEAG are fulfilled.

3.3.2.3. Conclusions

- (82) The Commission therefore concludes that the scheme fulfils the first (positive) condition of the compatibility assessment, *i.e.*, that the aid facilitates the development of an economic activity pursuant to the requirements set out in CEEAG Sections 3 and 4.11.

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

3.3.3.1. Positive effects of the aid

- (83) The scheme will contribute to the development of certain economic sectors particularly exposed to international trade and which rely heavily on electricity for value creation (see recital (76)). In so doing, it also mitigates the environmental impact of (i) the shift of production in locations outside the EU with lower environmental disciplines, as well as (ii) the lower take-up of electrification processes within the sectors concerned in the EU.

3.3.3.2. The need for State intervention and eligibility

- (84) Point 402 of the CEEAG provides that the Commission has used appropriate measures to identify those sectors which are particularly exposed to the risks mentioned in point 400, namely the risk of activities in such sectors moving outside the Union to locations where environmental disciplines are absent or less ambitious. Point 405 of the CEEAG further provides that aid can only be granted to undertakings operating in sectors at risk and significant risk of relocation outside the EU where environmental disciplines are less ambitious. Sectors meeting these eligibility criteria are listed in Annex 1 to the CEEAG.
- (85) The Commission notes that the amended scheme limits eligibility to undertakings operating in the sectors included in the in Annex 2 of the EnFG, which only includes sectors “at risk” and “at significant risk” listed in Annex 1 to the CEEAG (see recital (31)).
- (86) With regard to the eligibility conditions linked to a minimum annual electricity consumption and to having an energy management system in place (recital (33)), as detailed in recitals (155) to (161) of the first initial Decision and (66) to (71) of the second initial Decision, the Commission has assessed that those eligibility requirements are objective, transparent, and apply equally to all beneficiaries in the same factual situation. Moreover, in 2021 the Commission has concluded in Decision SA.56826 that the treatment of hydrogen producers is justified by the fact that they are in a different factual situation and by the desire to ramp-up that technology in Europe (recital 382 of Decision SA.56826). The Commission also concluded that the treatment of hydrogen producers is based on objective and transparent criteria and does not discriminate between undertakings in similar factual situation (recital 383 of Decision SA.56826). The assessment under the conditions established in point 407 of the CEEAG does not affect this conclusion.

Therefore, the eligibility conditions described in recital (34) comply with point 407 of the CEEAG.

- (87) Furthermore, through the eligibility requirement to have an energy management system in place, the amended scheme verifies that beneficiaries comply with the obligation to conduct an energy audit within the meaning of Article 8 of Directive 2012/27/EU. Therefore, the Commission considers that the amended scheme complies with point 414 of the CEEAG.
- (88) The Commission notes that the additional eligibility requirements introduced by the amended scheme and described in recitals (34) to (40) are inspired by the conditions included under point 415 of the CEEAG, and it aims at implementing those conditions *ex ante*. Those alternative conditions provide a varied range of means to meet the eligibility requirement and are based on objective, non-discriminatory and transparent criteria related to the findings of independent energy audits, shares of RES electricity consumption by the beneficiary, and proven investments to decarbonise its production process. The Commission therefore considers that those conditions apply in the same way for all eligible undertakings in the same sector that are in a similar factual situation and that the eligibility requirements described in recitals (34) to (40) complies with point 407 of the CEEAG.
- (89) On the basis of recitals (84) to (88), the Commission considers that the eligibility criteria of the amended scheme are objective, non-discriminatory and transparent. Moreover, the Commission considers that the aid is granted, in principle, in the same way for all eligible beneficiaries in the same sector if they are in a similar factual situation. Therefore, the eligibility criteria of the amended scheme comply with point 407 of the CEEAG.
- (90) As mentioned in recital (41), no aid will be granted to undertakings that:
- (a) are in difficulty in accordance with the provisions of the Commission Guidelines on State aid for rescuing and restructuring non-financial enterprises in difficulty; or
 - (b) are subject to an outstanding recovery order following a previous decision by the European Commission declaring an aid illegal and incompatible with the internal market.
- (91) The Commission notes that these requirements reflect the conditions of points 14 and 15 of the CEEAG, which are therefore complied with.
- (92) On the basis of these elements, the Commission considers that the amended scheme is necessary to support the economic activities of EIUs.

3.3.3.3. The appropriateness of the aid

- (93) Reductions are granted only on levies that finance support to combined heat and power and offshore wind installations (see recital (5) and (13)). In particular, the Commission notes that the CHP surcharge is intended to cover the financing needs of the combine heat and power generation. It is therefore a surcharge to support cogeneration (see recital (50) of the first initial decision). The offshore grid surcharge is used to finance offshore connection costs. It is therefore a

surcharge to support renewable energy (see recital (65) of the second initial decision). The amended scheme is thus limited to levies on electricity consumption that finance energy and environmental policy objectives, which do not reflect part of the cost of providing electricity to the beneficiaries in question, in line with point 403 of the CEEAG.

- (94) As explained in recital (78), the amended scheme complies with point 404 of the CEEAG.
- (95) As explained in recital (49), the aid is granted in the form of a levy reduction and the amended scheme requires beneficiaries to submit, at the latest by 31 May of the year following the reduction of the levies, the necessary information to monitor the aid granted. On this basis, the obligation to pay the levy is determined in line with the actual consumption of electricity. The German authorities also explained that, if the conditions giving right to reduced levies ceased to exist during the year, the right to aid is immediately withdrawn with retroactive effect, and the obligation to pay the unreduced levies is immediately due. Therefore, the Commission considers that the conditions under point 413 of the CEEAG are satisfied.
- (96) It follows that the aid provided and the form of aid chosen for the amended scheme is an appropriate instrument to support the targeted economic activity.

3.3.3.4. The proportionality of the aid, including cumulation.

- (97) The Commission notes that, in line with point 408 of the CEEAG, beneficiaries from sectors “at significant risk” and from sectors “at risk” pay respectively at least 15 % and 25 % of the levies (see recital (42)).
- (98) The Commission notes that, in line with point 409 of the CEEAG, the amended scheme may further limit the costs resulting from the levies up to 0.5 % of the GVA of the undertakings operating in sectors “at significant risk” and to 1 % of the GVA of those operating in sectors “at risk” (recital (43)).
- (99) Moreover, the Commission notes that the GVA is calculated in line with the definition of point 411 of the CEEAG (see recital (44)) and (ii) for aid granted as of the application year 2024, the GVA used to limit the cost of compensable levies will be the arithmetic average over the previous three years for which GVA data is available (see recital (45)).
- (100) Beyond the conditions outlined in recitals (97) and (98), points 408 and 409 of the CEEAG also provide that, in any event, reductions shall not result in a levy below 0.5 EUR/MWh. The amended scheme includes this condition (see recital (48)).
- (101) As explained in recital (47) for undertakings operating in sectors at risk the maximum aid can be increased up to the levels allowed for those operating in sectors at significant risk if the beneficiary demonstrates that it meets the following cumulative requirements:
 - (a) It covers at least 50 % of its electricity consumption from non-subsidised renewable energy,

- (b) It covers at least 5 % of its electricity consumption from non-subsidised renewable energy that is procured through a direct contractual relationship, or it covers at least 2.5 % of its electricity consumption with renewable energy generated on or within a 10 km radius of its purchasing point.
- (102) The Commission notes that, in connection with the condition of point (a) of recital (101), the condition described in point (b) of recital (101) is equivalent to requiring a beneficiary to (i) cover at least 10 % of its RES electricity consumption through a direct contractual relationship to procure RES electricity and (ii) cover at least 5 % of its RES electricity consumption with RES electricity generated onsite or near site.
- (103) On the basis of recitals (101) and (102), the Commission concludes that his increase in aid amount and the related conditions to obtain it are compatible with point 410 of the CEEAG.
- (104) On the basis of recitals (97) to (103), the Commission considers that the aid granted under the amended scheme complies with points 408 to 412 of the CEEAG and is therefore proportionate.
- (105) With regard to the aid calculation for hydrogen producers (see recital (46)), in 2021 the Commission has concluded in Decision SA.56826 that their treatment is justified by the fact that they are in a different factual situation and by the desire to ramp-up that technology in Europe (recital 382 of Decision SA.56826). The Commission also concluded that the treatment of hydrogen producers is based on objective and transparent criteria and does not discriminate between undertakings in similar factual situation (recital 383 of Decision SA.56826). The assessment under the conditions established in point 407 of the CEEAG does not affect this conclusion.
- (106) As regards cumulation, the German authorities declare that aid under the amended scheme cannot be cumulated with ad hoc or de minimis aid in relation to the same eligible costs (recital (50)). Therefore, the Commission considers that the conditions in point 56 of the CEEAG are fulfilled.

3.3.3.5. Energy audits and management systems

- (107) As noted in recital (87), the Commission considers that the amended scheme complies with point 414 of the CEEAG.
- (108) As noted in recital (88), the additional eligibility requirement introduced by the amended scheme and described in recital (34) aim at implementing ex ante the conditions included under point 415 of the CEEAG.
- (109) The first alternative condition to meet the eligibility requirement of recital (34) requires that certain investments identified in the energy audit are carried out and that this is demonstrated through a through a self-declaration certified by an independent auditor (recital (35)). Furthermore:
 - (a) an investment is considered economically feasible if it has a positive net present value (“NPV”) when accounting for 60 % (for application years 2023 to 2025) or 90 % (from application year 2026 onwards) of its

expected useful life (recital (35)(a)). The Commission notes that the temporary benchmark set for 2023 to 2025 may entail that those short-term investments ⁽¹⁸⁾ with a payback not exceeding three years would not be considered economically feasible. On the other hand, the methodology set by the measure implies that investments with a payback period well above three years are considered economically feasible ⁽¹⁹⁾. Furthermore, Germany has provided evidence showing that the average useful life of energy efficiency investments in Germany is well above five years in a wide range of intervention areas (recital (37)). On this basis, the Commission considers that the methodology to identify economically feasible measures is overall more stringent than the condition set in paragraph 415 (a) of the CEEAG.

- (b) To the extent that the beneficiary has not implemented all economically feasible measures identified by its energy management system, as detailed in recital (35)(c) the amended scheme considers an overall level of investment to be proportionate to a certain minimum share of the aid received. The Commission notes that this share increases over time and reaches 100 % of annual aid granted as of application year 2025.
- (110) The second alternative condition to meet the eligibility requirement of recital (34) is demonstrated through cancellation of guarantees of origin and/or, in the case of RES electricity not consumed through the network, proof that produced RES electricity meets electricity consumption in relation to each 15-minute interval (see recital (38)).
- (111) The third alternative condition to meet the eligibility requirement of recital (34) requires to invest at least 50 % of the levy reductions granted two years before the aid application in measures to decarbonise production process. This is demonstrated through a self-declaration, certified by an independent auditor and attesting the amount of investments made, the measures put in place for the reduction of direct emissions from the installation, and the emission reductions achieved (see recital (39)). For the application years up to and including 2025, the this requirement is also considered to be fulfilled if the applicant commits to make the relevant investments in the future, in which case failure to comply with the commitment in due time entails a repayment in full of the aid received (see recital (40)).
- (112) Therefore, based on recitals (109)-(111) the Commission considers that introduction of the eligibility requirement described in recital (34) implies that the conditions set out in point 415 of the CEEAG are met.

3.3.3.6. Transitional plan

- (113) Point 416 of the CEEAG states that, to avoid disruptive changes in the levy burden for individual undertakings that do not meet the eligibility conditions set out in Section 4.11, Member States can establish a transitional plan for those

⁽¹⁸⁾ Investments with a useful life below five years.

⁽¹⁹⁾ Notably for all investments with a useful life of more than five years and for virtually all investments with a positive NPV when accounting for 90 % of their expected useful life.

undertakings. The transitional plan will be limited to undertakings that comply with the two following cumulative criteria:

- (a) in at least one of the last 2 years prior to the adaptation under point 468(a), they received aid in the form of reduced levies under a national aid scheme declared compatible on the basis of Section 3.7.2 of the Guidelines on State aid for environmental protection and energy 2014-2020 ⁽²⁰⁾ (“EEAG”).
 - (b) at the time when the aid under point 416(a) was granted, they met the eligibility criteria of Section 3.7.2 of the EEAG.
- (114) In line with point 416 of the CEEAG, the transitional plan established by the amended scheme aims at avoiding disruptive changes in the levy burden for individual undertakings that would not meet the eligibility conditions laid down in Section 4.11 of the CEEAG (see recitals (53)(a) and (53)(c)).
- (115) The Commission notes that, in line with point 416(a) of the CEEAG, the transitional plan is limited to EIUs that, in at least one of the last 2 years prior to the adaptation under point 468(a) of the CEEAG, received aid in the form of reduced levies under a national aid scheme declared compatible on the basis of Section 3.7.2 of the EEAG (recital (53)(a)).
- (116) Moreover, in line with point 416(b) of the CEEAG, the amended scheme limits eligibility to the transitional plan to undertakings that met the eligibility criteria of Section 3.7.2 of the EEAG (recital (53)(b)).
- (117) Based on recitals (114) to (116), the Commission concludes that the cumulative conditions of point 416 of the CEEAG are complied with.
- (118) As described in the table of recital (52) the transitional plan will entail, in line with point 417 of the CEEAG, a progressive and complete adjustment to the conditions resulting from the application of the eligibility and proportionality criteria of Section 4.11 of the CEEAG. In particular, the Commission notes that:
- (a) In line with point 417(a) of the CEEAG, under the transitional plan the levies applicable to the years until 2026 will be reduced by 65 % or through a GVA cap equal to 1.5 %.
 - (b) In line with point 417(b) of the CEEAG, under the transitional plan the levies applicable to the year 2027 will be reduced by 45 % or through a GVA cap equal to 2.5 %.
 - (c) In line with point 417(c) of the CEEAG, under the transitional plan the levies applicable to the year 2028 will be reduced by 20 % or through a GVA cap equal to 3.5 %.
- (119) In line with point 418 of the CEEAG, undertakings eligible under the transitional plan which demonstrate to sufficiently cover their consumption with RES

⁽²⁰⁾ OJ C 200, 28.6.2014.

electricity are entitled to the aid intensities applicable in 2024-2026 throughout the entire period of the transitional plan (recital (54)).

- (120) Therefore, the Commission considers that the transitional plan included in the amended scheme is in line with Section 4.11.3.5 of the CEEAG.

3.3.3.7. Evaluation plan

- (121) Points 455 and 456 CEEAG state that to further ensure that distortions of competition and trade are limited, the Commission may require notifiable aid schemes to be subject to an ex-post evaluation and that in any event ex-post evaluation will be required when the State aid budget exceeds EUR 750 million over the total duration of the scheme.
- (122) As further explained in point 459 CEEAG, the Member State must notify a draft evaluation plan, which will be an integral part of the Commission's assessment of the scheme.
- (123) In view of the long duration of the scheme and large envisaged budget, the amended scheme will be subject to an ex-post evaluation. In the context of prenotification contacts, the Commission requested on 1 June 2023 the submission of an evaluation plan, which the German authorities submitted in the context of the notification as an integral part of it (see recital (55)).
- (124) The Commission considers that the notified evaluation is in accordance with the common methodological principles provided by the Commission in line with point 460 of the CEEAG: the objectives of the amended scheme to be evaluated, including evaluation questions, the result indicators, the envisaged methodology to conduct evaluation and the proposed timing of the evaluation including the date of submission of the final evaluation report (see section 2.3.4).
- (125) The Commission takes note of the commitment made by the German authorities to submit a first interim report within 24 months after the adoption of the Commission's decision approving the amended scheme, a second interim report in 2030 and a final report by the end of the amended scheme (2033) (see recital (62)). The Commission notes that the evaluation method might be further fine-tuned in common accord between the German authorities and the Commission, and it will be described in the first interim report (see recital (62)).
- (126) Moreover, the Commission acknowledges the commitments made by the German authorities, pursuant to the common methodological principles, that the evaluation will be conducted according to the notified evaluation plan by an independent evaluation body. The procedures envisaged for selecting such evaluation body are appropriate in terms of independence and skills. Moreover, the proposed modalities for the publication of the evaluation results are adequate to ensure transparency.
- (127) The Commission considers that the notified evaluation plan, taking into account Germany's commitment, will contain all the necessary elements in line with the common methodological principles: the objectives of the amended scheme to be evaluated, the evaluation questions, the result indicators, the envisaged methodology to conduct the evaluation, the data collection requirements, the proposed timing of the evaluation including the date of

submission of the final evaluation report, the description of the independent body conducting the evaluation and the criteria that will be used for its selection and the modalities for ensuring the publicity of the evaluation (see recitals (55)-(64)).

- (128) The Commission notes the additional commitment that Germany will communicate to the Commission any difficulty that could significantly affect the agreed evaluation in order to work out possible solutions (see recital (63)).
- (129) Moreover, the Commission notes that the amended scheme will be suspended if the final evaluation report is not submitted in due time and is not of sufficient quality.

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

- (130) Points 402 of the CEEAG provides that “[t]he Commission has used appropriate measures to identify those sectors which are particularly exposed to the risks mentioned in point 400 and it has introduced proportionality requirements taking into consideration that, if the levy reductions are too high or awarded to too many electricity consumers, the overall funding of support to energy from renewable sources might be threatened and distortions of competition and trade may be particularly high”.
- (131) Germany, by observing compliance with the eligibility and proportionality conditions of Section 4.11 of the CEEAG ⁽²¹⁾, ensures that distortions on competition and trade are kept in check.
- (132) In light of the considerations in recitals (85)-(89), (101)-(102) and (105), the Commission considers that the eligibility requirements and the increase in aid amounts to certain categories of beneficiaries are objective, non-discriminatory and transparent and they ensure the minimization of distortions on competition and trade, in line with point 407 of the CEEAG.
- (133) As a result, the Commission considers that the amended scheme is open in a non-discriminatory fashion to a broad range of potential beneficiaries operating in the eligible sectors listed in Annex 1 of the CEEAG (see recital (31)), thus resulting in more limited distortive effects on competition in line with points 66 and 68 of the CEEAG.
- (134) Furthermore, point 70 of the CEEAG explains that the Commission will approve measures under the CEEAG for a maximum period of 10 years. As stated in recital (25)(a) the German authorities commit to renotify the measure should its application extend beyond 10 years from the adoption of this decision. Therefore, the requirement in point 70 of the CEEAG is respected.
- (135) The Commission therefore considers that aid granted under the amended scheme avoids undue negative effects on competition and trade.

⁽²¹⁾ See sub-section 3.3.2.2 for compliance with the eligibility conditions of Section 4.11 of the CEEAG and sub-section 3.3.2.4 of this decision for compliance with the proportionality requirements of Section 4.11 of the CEEAG.

3.3.3.9. The transparency of the aid

- (136) The Commission notes that the German authorities will ensure compliance with the transparency requirements laid down in points 58 to 61 of the CEEAG (see recital (51)).

3.3.3.10. Appropriate measures

- (137) The Commission considers that the amended scheme brings the initial schemes into line with the CEEAG as of 1 January 2024. Therefore, the Commission concludes that Germany complies with point 468(a) of the CEEAG.

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

- (138) Points 402 of the CEEAG provides that “[t]he Commission has used appropriate measures to identify those sectors which are particularly exposed to the risks mentioned in point 400 and it has introduced proportionality requirements taking into consideration that, if the levy reductions are too high or awarded to too many electricity consumers, the overall funding of support to energy from renewable sources might be threatened and distortions of competition and trade may be particularly high”.

- (139) Germany, by observing compliance with the eligibility and proportionality conditions of Section 4.11 of the CEEAG⁽²²⁾, ensures that both distortions on competition and trade and negative effects on support to promotion of combined heat and power and offshore wind installations are kept in check.

- (140) Further, in accordance with point 76(c) of the CEEAG, the measure is subject to a time limitation (see recital (25)(a)). In addition, the granting of reduction from the levies is time limited to one year (see recital (22)). Potential beneficiaries may obtain the reduction of the levies in the year(s) to follow only provided that they meet the eligibility criteria.

- (141) Moreover, the amended scheme helps the sectors which rely heavily on electricity for their value creation to decrease the risk of moving outside the Union to locations where environmental disciplines are absent or less ambitious (see recital (21)). Beneficiaries are required to have an energy management system in place (see recital (33)(b)) as well as either a certain share of RES electricity consumption or proven investments in energy efficiency or in decarbonising production process (see recital (34)).

- (142) Therefore, the Commission concludes that the positive effects of the amended scheme outweigh the negative effects on the internal market.

3.3.4. *Conclusion on the compatibility of the scheme*

- (143) The Commission concludes that the aid facilitates the development of an economic activity and does not adversely affect trading conditions to an extent

⁽²²⁾ See sub-section 3.3.2.2 for compliance with the eligibility conditions of Section 4.11 of the CEEAG and sub-section 3.3.2.4 of this decision for compliance with the proportionality requirements of Section 4.11 of the CEEAG.

contrary to the common interest. Therefore, the Commission considers the aid compatible with the internal market based on Article 107(3)(c) TFEU and on the relevant points of CEEAG.

4. AUTHENTIC LANGUAGE

(144) As mentioned in recital (4), Germany has accepted to have the decision adopted and notified in English. The authentic language will therefore be English.

5. CONCLUSION

The Commission has accordingly decided not to raise objections to the aid as amended 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
Executive Vice-President