

## 1. PROCEDURE

- (1) By decision of 23 May 2017 in SA.42393 (2016/C) (ex 2015/N) implemented by Germany for certain end consumers (reduced CHP surcharge), the 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 measure”). By decision of 3 June 2021 in SA.56826 (2020/N), the Commission approved, among other things, an amendment to the first initial measure.
- (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 “initial Decisions”)<sup>(1)</sup>, 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 measure”).
- (3) Following prenotification contacts, on **04 December 2023** the German authorities notified amendments to the first and second initial measures (the “initial measures”), in accordance with Article 108(3) of the Treaty on the Functioning of 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 measures in line with the Guidelines on State aid for climate, environmental protection and energy 2022<sup>2</sup> (“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 MEASURE

### 2.1. The first initial measure (SA.42393 and SA.56826)

- (5) By decision of 23 May 2017 in SA.42393 (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 measure consists of (i) the Combined Heat and Power Generation Act (*Kraft-Wärme-Kopplungsgesetz*, 'the KWKG 2016, as

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<sup>(1)</sup> Commission Decision XXX.

<sup>(2)</sup> OJ C 80, 18.2.2022, p.1.

## Contact

notified")<sup>3</sup> 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 eligible for reduction of the surcharge under the Erneuerbare-Energien-Gesetz (“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<sup>4</sup>;
  - (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.
  - (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 measure 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).

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<sup>3</sup> 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.

<sup>4</sup> Published in the German Official Gazette on 24 July 2014 (BGBl I 2014 N°33, p. 1066)<sup>5</sup> 2020/C 224/02

- (12) By decision of 3 June 2021 in SA.56826 (2020/N), the Commission approved, among other things, an amendment to the first initial measure 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 will be taken into account to establish reductions on the CHP surcharges (see recitals (145) and (146) of Decision SA.56826).
- (13) The German authorities informed that, for reductions on CHP surcharges granted for the year 2022 and onwards, the GVA cap is calculated as the arithmetic mean of 2 years chosen from the most recent 3 years for which GVA data is available. The German authorities note that this method is applied in the same way to all beneficiaries (namely, that all applicants for a reduction of the EEG surcharge were entitled to choose 2 of the most recent 3 years for which GVA data is available) and argue this change does not constitute a notifiable change, in line with recital (11)(d)(i) of the Communication from the Commission concerning the prolongation and the amendments of the Guidelines on State Aid for Environmental Protection and Energy 2014-2020<sup>5</sup>.

## **2.2. The second initial measure (SA.49416)**

- (14) 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”).
- (15) 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.
- (16) The measure provides that the offshore surcharge is reduced for EIUs eligible for 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 improve its energy-efficiency.

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<sup>5</sup> 2020/C 224/02

- (17) 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.
- (18) However, the reduction of the offshore surcharge cannot go below a minimum contribution of 0.03 EUR ct./kWh. For more details see recitals (14) to (17) of the second initial Decision.
- (19) The second initial measure 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).
- (20) The German authorities informed that, for reductions on offshore surcharge granted for the year 2022 and onwards, the GVA cap is calculated as the arithmetic mean of 2 years chosen from the most recent 3 years for which GVA data is available. The German authorities note that this method is applied in the same way to all beneficiaries (namely, that all applicants for a reduction of the EEG surcharge were entitled to choose 2 of the most recent 3 years for which GVA data is available) and argue this change does not constitute a notifiable change, in line with recital (11)(d)(i) of the Communication from the Commission concerning the prolongation and the amendments of the Guidelines on State Aid for Environmental Protection and Energy 2014-2020.

### **2.3. The notified amendments**

- (21) The notified amendments to the initial measures bring them under one single scheme (“the amended measure”). 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<sup>6</sup> (EnFG), in particular Section 4, Subsections 1 to 3, which constitutes the legal basis for the amended measure.
- (22) The German authorities note that the EnFG merges in one law the financing systems of energy policy measures which in the past were scattered through several laws. Apart from the amended measure, all the other measures provided in the EnFG are not object of the notification and fall outside of the scope of this decision.

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<sup>6</sup> Energy Financing Act of July 28th 2022, BGBl. I 1237

- (23) According to German authorities, the main objective of the amended measure 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.
- (24) 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, the granting authority verifies the eligibility of the applicants, and, on that basis, it grants access to the scheme, i.e. the reduced levy rates, for the year that follows the application year. 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 from abroad.
- (25) 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 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.
- (26) The German authorities have also estimated that, in the 2023-2033 period, in the absence of the measure 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 measure 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).
- (27) The notified amendments to the initial measures relate to the following areas:
- (a) The amended measure 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. The German authorities commit to renotify the measure to the Commission if the amended measure is extended beyond that period.
- (b) The amended measure 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.
- (28) Due to the high degree of uncertainty, the German authorities presented the estimated budget as a range between two scenarios, minimum and maximum<sup>7</sup>, with an estimated average budget of EUR 12 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

<sup>7</sup> The electricity consumption in the min scenario is assumed to remain constant at 98.7 TWh until 2033, and in the max scenario is expected to gradually increase to 130 TWh by 2033.

<b>Min</b> (million EUR)	808	914,8	974,1	1.030	1.090	1.200	1.320	1.300	1.260	1.230	11.127
<b>Max</b> (million EUR)	810,8	948,7	1.040	1.140	1.240	1.430	1.630	1.600	1.560	1.550	12.950

- (29) For the purpose to align the conditions for granting reduced CHP and offshore levies to the CEEAG, the features of the initial measures described in the initial Decisions remain unchanged, except for the following areas:
- (a) Eligibility requirements
  - (b) Methods for calculating maximum individual aid amounts
  - (c) Establishment of a transitional plan
- (30) 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 measure, and that future levy reductions within such scope will be notified as a new amendment to the amended measure.
- (31) The German authorities confirmed that, in line with article 68 of the EnFG, the amended measure 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 measure remain unchanged.

### 2.3.1. Eligibility requirements

- (32) Under the amended measure, eligibility is limited to undertakings that operate in a sector listed in Annex 2 to the EnFG<sup>8</sup>. The list of eligible sectors under the amended measure replicates the sector list of Annex 1 to the CEEAG, which lists “sectors at significant risk” and “sectors at risk” of relocation to jurisdictions where environmental disciplines are absent or less ambitious.
- (33) The amended measure removes the requirements to have a certain level of electro-intensity at the level of undertaking (see recitals (7)(c) and (16)(c)).
- (34) The amended measure maintains that, in order to be eligible, an undertaking 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.

<sup>8</sup> 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).

- (35) Furthermore, the amended measure 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 made investments to substantially decarbonise the production process. For those operating in sectors covered by the Commission Delegated Regulation (EU) 2019/331<sup>9</sup>, the investment shall reduce the greenhouse gas emissions to a level well below the relevant product benchmarks.
- (36) The condition of recital (35)(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 granted two years before the aid application in measures concretely identified in its energy management system. The minimum share evolves over time as follows:
    - 50% for the application year 2023
    - 80% for the application years 2024 and 2025
    - 100% for the application years from 2026 onwards.

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.

- (37) With regard to the methodology for the determination of economically feasible measures described in recital (36)(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:

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<sup>9</sup> 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).

- (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.
- (38) 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*

<b>Groups of measures</b>	<b>Average useful life (years)</b>
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
<b>Average across groups</b>	<b>15,27</b>

- (39) Compliance with recital (35)(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<sup>10</sup>.
  - (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.
- (40) The condition of recital (35)(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.
- (41) For the application years up to and including 2025, the requirement foreseen in recital (35)(c) is 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 (40). Failure to demonstrate compliance with the commitments within the deadline will entail complete repayment of the aid received [plus interests].
- (42) The EnFG provides that the aid granted under the amended measure 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.
  - (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*

- (43) The amended measure provides that the maximum aid intensity will be 85 % of the levies charged at the consumption points concerned of undertakings operating in sectors at significant risk and 75 % of the levies charged at the consumption points concerned of undertakings operating in sectors at risk.
- (44) Without restrictions among beneficiaries undertakings, the maximum aid intensities may exceed the limits of recital (38) through the establishment of amended GVA caps (see recital (9):

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<sup>10</sup> In accordance with Article 30 of the Ordinance on the Implementation of Origin and Regional Proof of Origin.

- (a) For the granting year 2023, the GVA cap [is applied in line with the first initial measure and] is 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.
- (b) For the granting years 2024 onwards, the 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 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.
- (45) 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<sup>11</sup>, 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.
- (46) To determine aid amounts in line with recital (43)(b), 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.
- (47) Except in the case of hydrogen producers (see recital (12)), the levy reductions and the GVA caps described in recitals (42) and (43) apply only to the annual electricity consumption above 1 GWh.
- (48) 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 (39) 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.
- (49) 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

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<sup>11</sup> 'Goods and services' do not include personnel costs.

0.5 EUR/MWh. For this purpose, the full levies paid on the first GWh of consumption shall not be taken into account<sup>12</sup>.

- (50) 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. 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.
- (51) The German authorities declare that aid under the amended measure cannot be cumulated with ad hoc or de minimis aid in relation to the same eligible costs.
- (52) 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 notified measure will be published on transmission system operators' websites in line with Article 51 of the EnFG. Germany confirms that 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*

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

	<b>2024-2026</b>	<b>2027</b>	<b>2028</b>
Levy reduction	65 %	45 %	20 %
GVA cap <sup>13</sup>	1.5 %	2.5 %	3.5 %

- (54) The transitional plan will be limited to the undertakings that meet the following cumulative requirements:
  - (a) On the basis of the initial measures, they have obtained the right to reduced CHP and offshore levies for 2022 or 2023.

<sup>12</sup> Except in the case of hydrogen producers, for which reduced levies apply to the first GWh of consumption.

<sup>13</sup> The application of the GVA cap follows the methodology described in recitals (43)-(45).

- (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 [at the consumption point concerned] with the requirements of recital (35).
- (55) Undertakings eligible under the transitional plan which demonstrate to cover their consumption with RES electricity in line with recital (48) are entitled to the aid intensities applicable in 2024-2026 throughout the entire period of the transitional plan.

#### 2.3.4. *Evaluation plan*

- (56) The German authorities have submitted an evaluation plan for the measure. The main elements of the evaluation plan are described below.
- (57) The evaluation plan notified by the German authorities describes the objectives of the scheme subject to evaluation and includes evaluation questions in order to assess the scheme's direct and indirect effects, as well as the proportionality of the aid and the appropriateness of the chosen aid instrument.
- (58) 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 scheme achieves its objectives and how the climatic and economic impact and the economic efficiency of the measure are to be assessed.
- (59) For the purpose of evaluation of the 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.
- (60) 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.
- (61) 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.
- (62) 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 BAFA. The evaluation plan will also assess to what degree micro data can be used for potential microeconomic evaluation methods.
- (63) The German authorities have committed to submit a revised version of the evaluation plan, taking into account the methodological comments provided by DG COMP and the early evidence concerning the implementation of the scheme, within 12 months after the adoption of the Commission's decision approving the

scheme Germany commits to submit one interim report in 2027 and the final evaluation report to the Commission by the end of the scheme in 2033.

- (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.