



Brussels, 23.5.2017
C(2017) 3406 final

<p>In the published version of this decision, some information has been omitted, pursuant to articles 30 and 31 of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus [...]</p>		<p>PUBLIC VERSION</p> <p>This document is made available for information purposes only.</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--	---------------------------------------------------------------------------------------------

Subject: State Aid SA.38635 (2014/NN) – Italy – Reductions of the renewable and cogeneration surcharge for electro-intensive users in Italy

Sir,

1. PROCEDURE

- (1) By an electronic notification validated on 17 April 2014, registered at the Commission on the same date, the Italian authorities have notified an aid for users for which electricity costs represent a certain share of their turnover (and designated hereinafter as energy-intensive users, "EIUs") active in the manufacturing sector in the form of reduced electricity surcharges based on Article 39 of Law Decree No. 83 of 12 June 2012 and on the Ministerial Decree of 5 April 2013.¹
- (2) By letter dated 22 October 2014, the Commission informed Italy that it had decided to transfer the case to the register of unlawful aids (NN), as the measure notified was already enforced by Italy since 1 July 2013 in violation of art. 108

¹ Law Decree of 22 June 2012, No. 83, converted into Law of 7 August 2012, No. 134 and Decree of 5 April 2013 of the Minister of Economics and Finances,, *Definizione delle imprese a forte consumo di energia*, Italian Official Journal No. 91 of 18-4-2013.

Onorevole Angelino Alfano
Ministro degli Affari esteri e della Cooperazione Internazionale
P.le della Farnesina 1
I - 00194 Roma

- (3) TFEU. In addition, the information provided in the notification showed that reductions of the same electricity surcharges had been granted to large electricity consumers (reaching at least 4 or 8 GWh of consumption in a month and referred to hereinafter as reductions and exemptions based on the consumption block system) already before the notified reductions for EIUs. The Commission examined those reductions together with the reductions to EIUs introduced in 2013.
- (3) Further to requests from the Commission, the Italian authorities provided additional information on 28 October 2014 (integrated on 29 October 2014 and on 5 December 2014), 5 June 2015, 28 August 2015, 9 October 2015, 22 October 2015, 29 October 2015, 26 November 2015, 15 January 2016, 4 July 2016, 2 August 2016, 27 October 2016, 22 November 2016 and 29 November 2016 (integrated on 14 December 2016), 28 March 2017 and 5 May 2017. By letter dated 30 June 2015 the Italian authorities also transmitted to the Commission an adjustment plan. Also a number of meetings and videoconferences have been held.
- (4) On 31 March 2017, Italy waived its right under Article 342 TFEU in conjunction with Article 3 of Council Regulation (EEC) No 1/1958² to have the decision adopted and notified in Italian and agreed that the decision be adopted and notified in English.
- (5) On 19 March 2015, the Commission received a complaint filed by Federdistribuzione in which the complainant draws the attention of the Commission to reductions granted to certain undertakings of the manufacturing sector on the basis of the Ministerial Decree of 5 April 2013. The complainant considers those reductions of electricity surcharges to constitute illegal State aid as the measures granted a selective advantage and were not notified to the Commission before their implementation. It also considers the reductions to be discriminatory because they are reserved to the manufacturing sector, require a minimum consumption of 2.4 GWh and require a minimum level of electro-intensity. The complaint was registered under file number SA.41508 (2015/CP). It was forwarded to Italy. As the measure concerned by the complaint corresponded to the aid measure notified by Italy on 17 April 2014 under the present procedure, the Commission examined Federdistribuzione's argument in the framework of procedure SA.38635 (2014/NN) and informed the complainant thereof by letter of 2 December 2015.

2. DETAILED DESCRIPTION OF THE MEASURE

2.1. The general system charges and the "consumption blocks"

- (6) The reductions for EIUs notified by Italy relate to the so-called general system charges (*oneri generali di sistema*), in particular the so-called A components (see also recital (7) below) paid by final electricity consumers. The A components include, amongst others, the A3 component dedicated to the financing of the

² Council Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community (OJ 017, 6.10.1958, p. 385).

support for the production of renewable energy and assimilated resources (including cogeneration of power and heat).

- (7) In recent years, the A components have represented a significant and constantly increasing percentage of the electricity expenditure for final consumers. The A3 component in particular increased significantly as of 2011 as a result of the increasing deployment of installations producing electricity from renewable resources. Italy started already in the 1990s to encourage production of sustainable electricity with a view to increasing environmental protection.³ In 2014, electricity produced from renewable sources reached approximately 40% of the gross electricity generation in Italy.⁴ In 2013, electricity produced from cogeneration reached 12.7% of the gross electricity generation in Italy.⁵
- (8) The revenues collected in 2015 through the A components are presented in the table below.

Table 1: The A components

Tariff component	Objective	Revenues 2015 (EUR million)
A2	Decommissioning of nuclear plants	622
A3	Subsidising of energy from renewable ("RES") and assimilated sources, including cogeneration	13 804
A4	Financing of special tariff regimes	248
A5	Financing of research of general interest in the power system	52
As	Social bonus: Low electricity prices for citizens in difficulty	17
Ae	Reductions for energy intensive users	689

Source: Autorità per l'Energia Elettrica il Gas e il Sistema Idrico

- (9) The general system charges are set by the Authority for electricity, gas and water system⁶ (Autorità per l'Energia Elettrica il Gas e il Sistema Idrico, "AEEGSI") and compiled in the "*Testo Integrato delle disposizioni dell'autorità per l'energia elettrica e il gas per l'erogazione dei servizi di trasmissione e distribuzione dell'energia elettrica, Periodo di regolazione 2012-2015*". The AEEGSI generally revises them every three months, based on financing needs. The amount collected through the general system charges is transferred in accounts managed by a public entity (*ente pubblico economico*) called Fund for the Electricity and Environmental Services (*Cassa per i Servizi Elettrici e Ambientali* or CSEA)⁷,

³ Italy modified its renewable support scheme in 2016. The amended renewable support scheme was approved by Commission decision of 28 April 2016, SA.43756 (2015/N) – Italy – Support to electricity from renewable sources in Italy.

⁴ See EU Energy in Figures, Statistical Pocketbook 2016, p. 89.

⁵ See EU Energy in Figures, Statistical Pocketbook 2016, p. 89 combined with p. 106.

⁶ The AEEGSI is a public body created by law to function as regulatory body of the energy markets and the integrated water services.

⁷ Before the entry into force of Article 1, paragraph 670, of Law 28 December 2015, No. 208, the fund was called "*Cassa Conguaglio per il Settore Elettrico*".

with the exception of the A3 and As components. 98% of the former is directly awarded to the public company called Energy Services Operator (*Gestore Servizi Energetici* or GSE⁸), while the remaining 2% is transferred to the CSEA. As to the latter, the electricity distributors transfer to the CSEA only the difference between the amount collected and the costs sustained. The use of these funds is regulated by the AEEGSI. The charges must be paid by end consumers to their respective electricity suppliers, which in turn transfer the amounts to the electricity distributors.⁹ The latter transfer the money collected to the CSEA or the GSE, which earmarks it for each of the general interest objectives financed by the system.

- (10) The A3 component, which in the first quarter of 2015 constituted 89% of all A charges, is composed by a fixed part (c€/connection point) and of a variable part (c€/kWh). It can also be divided in two sub-components: the A3res¹⁰ and the CIP6/92. The former finances subsidies to renewable energies (but granted to installations supported under schemes that were introduced after the CIP6/92 scheme) and constituted 94% of the A3 component in the first quarter of 2015. The latter finances all support measures under the CIP6/92 scheme¹¹. They include: renewable energies (30%), energy efficiency in industries (55-60%) consisting of cogeneration of heat and power or cogeneration of power and steam based on waste heat (those measures will hereinafter be designated together as "cogeneration") and energy from non-biodegradable waste (10-15%). The total annual budget associated to the CIP6/92 component in 2015 was EUR 600 million. It has been decreasing in recent years as no new contracts can be concluded anymore under CIP6/92 and existing contracts will expire by 2021 (7 January 2021).

2.1.1. The general system charges before 2008 and exemption for consumption above 8 GWh/month

- (11) The general system charges have been introduced by the Legislative Decree No. 79/99¹² as a supplement to transmission charges (Article 3 (11) of Legislative Decree No. 79/99). The AEEGSI was to determine the level of the charges in order to cover the costs listed in Ministerial Decrees (*Decreti del Ministero dell'Industria, del commercio e dell'artigianato*) of 26 January 2000 and 17 April 2001.¹³ Like transmission fees, the general system charges depended on the voltage level to which the user was connected. Also, the general system charges

⁸ The GSE is an undertaking fully owned by the Ministry of Economy and Finance, of which it follows the strategic and management orientations. The AEEGSI sets the value and the application of the A3 component.

⁹ With judgment of 24 May 2016, the Council of State (*Consiglio di Stato*) has clarified that the obligation to pay is on the final consumers.

¹⁰ The AEEGSI designates this part as the part referred to under Point 49.7 of the *Testo Integrato delle disposizioni dell'autorità per l'energia elettrica e il gas per l'erogazione dei servizi di trasmissione e distribuzione dell'energia elettrica, Periodo di regolazione 2012-2015*.

¹¹ The CIP6/92 is a renewable and cogeneration support scheme introduced in 1992 in Italy.

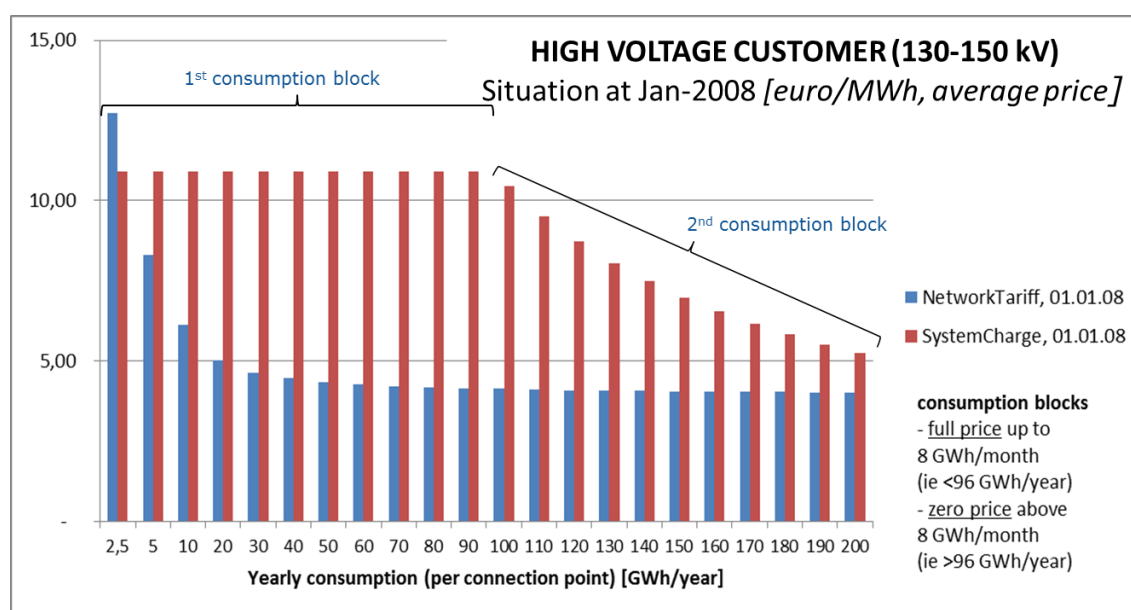
¹² Transposition of Directive 96/92/EC

¹³ Published in Official Journal of the Italian Republic No. 27 of 3 February 2000 and No. 97 of 27 April 2001.

were composed of a fixed component (charged per connection point) and a variable part (charged per unit of electricity consumed).

- (12) Legislative Decree No. 79/99 also provided that for activities implying high energy consumption, the charges should be degressive when consumption increased. On that basis, non-household users connected to the high voltage grid (and in theory to the medium voltage grid) have been entitled to reduced general system charges or exemptions when certain consumption thresholds were reached. These reductions, exemptions and consumption thresholds have been modified over time.
- (13) Before 2001, users connected to medium voltage or high voltage were entitled to a reduction of 40% for the variable part of the A components (expressed in lire/kWh – see the decision of the AEEGSI – *Deliberazione* – No. 108/00). Between 2001 (see *Deliberazione* No. 244/00) and April 2008, for undertakings connected to the medium and high voltage network the monthly consumption of electricity exceeding 8 GWh/month was exempted from the variable part of the A components (expressed in lire/kWh). Figure 1 below illustrates the impact of the exemption for the consumption above 8 GWh/month on the average A components per unit of electricity consumed.

Figure 1: Average general system charges (EUR/MWh) for high voltage users until April 2008 (impact of the exemption as of 8 GWh/month)



Source: Presentation submitted by the Italian Authorities on 20.10.2015

2.1.2. Reductions and exemptions based on consumption blocks as of April 2008

- (14) In 2007, the AEEGSI launched a public consultation¹⁴ to revise the reductions granted so far to large consumers on the variable part of the A components as it was felt that the 8 GWh/month thresholds was creating distortions in markets where consumers with large electricity consumption were active. It was contemplated to have more than two consumption blocks in order to have a more

¹⁴ Act No. 12/2007 of the AEEGSI

progressive and equitable system. The following consumption blocks were contemplated as from 1 April 2008: 0-4 GWh/month, 4-8 GWh/month, 8-12 GWh/month and above 12 GWh/month. However, further to the public consultation, no additional consumption block was created at medium voltage level because only an extremely small percentage of the sample analysed of medium voltage undertakings occasionally reached such level. As on the low voltage level this threshold was never reached, no consumption block was created and the A components continued to be levied on the entire consumption. On medium voltage the A components continued to be levied on consumption up to 8 GWh/month and amounted to 0 for consumption exceeding 8 GWh/month. This exemption, however, remained theoretical. Italy indicated that in practice only one undertaking connected to medium voltage reached from time to time the 8 GWh monthly threshold.

- (15) Italy communicated for each voltage level data showing what the maximum possible consumption is for an undertaking connected to that voltage level (see Table 2 below).

Table 2: Consumption of a plant at maximum usage level (650hours/month or 90% of the total number of hours in a month)

Voltage	Low	Medium	High	Very high
kV	0.23-0.38	15-23	130-150	220-380
kW	200	4 000	15 000	40 000
Hours/month	650	650	650	650
GWh/month	0.1	2.6	9.8	26.0

Source: *Italian authorities*

- (16) Italy also indicated that there are only a limited number of companies connected to the high voltage level. For instance, ENEL counts only around 530 connection points to the high or very high voltage level. 335 of those connection points belong to undertakings considered as electro-intensive under Article 39, paragraph 1, of Law Decree No. 83 of 12 June 2012 (on electro-intensive undertakings, see also section 2.2 below). These 335 connection points belong to around 224 undertakings. They are all active in the manufacturing sector.
- (17) With the adoption of the "*Testo integrato delle disposizioni dell'Autorità per l'energia elettrica e il gas per l'erogazione dei servizi di trasmissione, distribuzione e misura dell'energia elettrica per il periodo di regolazione 2008-2011*",¹⁵ the consumption blocks were modified for undertakings connected to the high and very high voltage grid: they obtained a 50% reduction of the variable part of all A components on electricity consumption above 4 GWh/month, and a zero tariff for consumptions above 12 GWh/month (see Table 3 below).

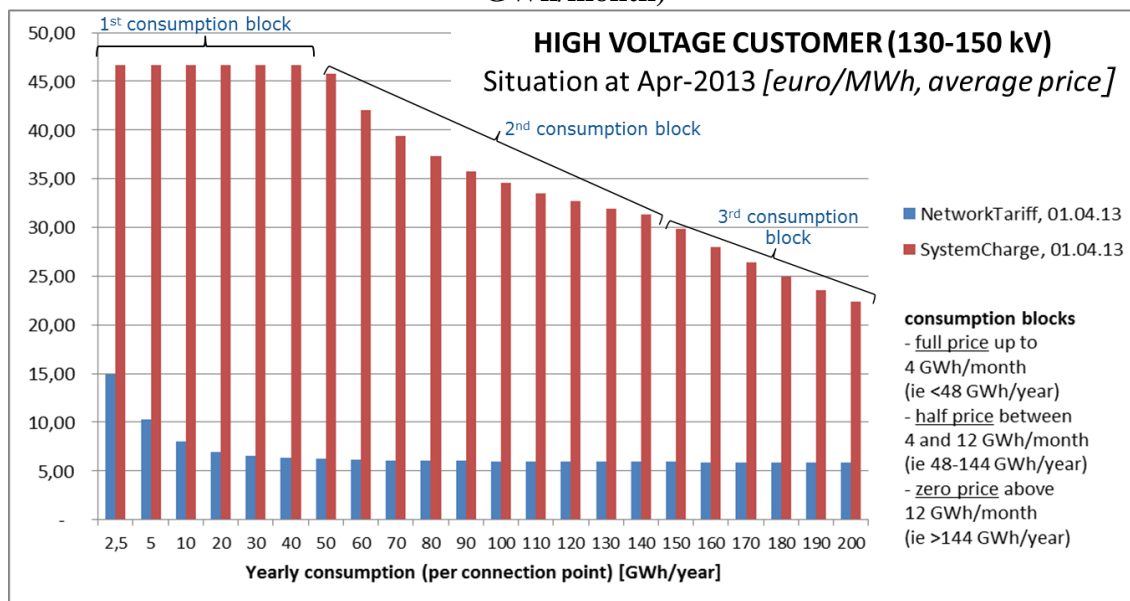
Table 3: Variable part of the A components - the 2008 reform

¹⁵ Approved by Decision of the Authority No. 348 of 29 December 2007

	0-4 GWh / month	4-8 GWh / month	8-12 GWh / month	Above 12 GWh / month
Low voltage	100%			
Medium voltage	100%		0	
High voltage	100%	50%		0

(18) As a result of the introduction of this new tariff structure, the A components imposed on consumption up to 4 GWh/month were increased to compensate for the net difference of the 50% reduction on consumption between 4 and 8 GWh/month and the 50% increase on consumption between 8 and 12 GWh/month. Following consultation of stakeholders, the AEEGSI considered that the reform had to comply with the "isogettito" constraint that required that the general system charges' revenue collected from each voltage level remained the same as before the 2008 reform.¹⁶ The AEEGSI added on that occasion that radical changes in the degressivity set by Legislative Decree n. 79/99 (on Legislative Decree n. 79/99, see above recitals (11) and (12)) for consumers with large consumption were out of its administrative powers.¹⁷ Figure 2 below illustrates the impact of the reduction and exemption on the average A components per unit of electricity consumed for high voltage users.

Figure 2: Average A components (EUR/MWh) for high voltage users after April 2008 (impact of the 50% reduction as of 4 GWh/month and the exemption as of 12 GWh/month)



Source: PPP submitted by the Italian Authorities on 20.10.2015

¹⁶ See consultation paper n. 34/07 of 2 August 2007, in particular para.44.3.

¹⁷ See consultation paper n. 34/07 of 2 August 2007, in particular para.44.4.

2.1.3. Reductions based on consumption blocks after the 2013 reform and before 1 January 2018

- (19) In April 2012 the AEEGSI started an investigation¹⁸ on allocation of charges and benefits of the general system charge. At that occasion, it stressed the necessity to modify the system in order to avoid a possible discrimination of small and medium-sized undertakings with absolute low levels of consumption but high energy intensity. Subsequently, Article 39 of Law Decree No. 83 of 12 June 2012 provided the legal basis for the revision of the general system charges through implementing decrees.¹⁹ Article 39, paragraph 1, provided that the concept of companies with significant energy consumption should be developed based on a minimum threshold of consumption and in function of the impact of energy costs on the value of the activities of the company (i.e. in respect of their electro-intensity). Article 39, paragraph 3, provided that general system charges for final electricity consumers would be re-determined by the AEEGSI by taking into account the concept of companies with significant energy consumption as defined based on Article 39, paragraph 1, of Law Decree No. 83 (and which are referred to in this decision as energy-intensive users, EIUs).
- (20) In November 2012, the Italian Competition Authority (Autorità Garante della Concorrenza e del Mercato, "AGCM") also underlined that implementing decrees should identify electro-intensive companies not only by reference to consumption but also by reference to their electro-intensity.²⁰
- (21) Pursuant to Article 39, paragraph 1, of Law Decree No. 83/2012, the Ministerial Decree of 5 April 2013 introduced the criteria and procedures to identify EIUs²¹ (described below). Pursuant to Article 39, paragraph 3, of the same Law Decree, the Ministry of Economic Development adopted two acts (*atti di indirizzo*) on 24 April 2013 and 24 July 2013, implemented by the AEEGSI with decisions (*deliberazioni*) No. 437 and 467 of October 2013.
- (22) As a result, additional reductions were granted to undertakings fulfilling the conditions established under the decrees mentioned in recital (21) above as of 1 July 2013. These conditions are described in section 2.2 below. At the same time, the previous system of reductions for large electricity consumers was not totally abolished but adapted. The 50% reduction for final users connected to the high and very high voltage grids and reaching 4 GWh/month of consumption remained. By contrast, the exemption from charges for consumption of electricity exceeding 12 GWh/month (when connected to the high or very high voltage grids) and exceeding 8 GWh/month (when connected to the medium voltage one) was abolished as of 1 January 2014 for final users not qualifying as EIUs (but maintained for final users qualifying as EIUs). Non-EIUs reaching a consumption of 12 GWh/month (on high and very high voltage) or 8 GWh/month (on medium voltage), however, obtained a further reduction on their consumption exceeding

¹⁸ See the decision (*delibera*) of the AEEGSI 159/2012/r/com

¹⁹ Law Decree of 22 June 2012, No. 83. converted into Law of 7 August 2012, No. 134

²⁰ See document of 6 November 2012 "AS992 - *Meccanismi di promozione produzione di energia da fonti rinnovabili ed assimilate*"

²¹ Minister of Economics and Finances, Decree of 5 April 2013, *Definizione delle imprese a forte consumo di energia*, Italian Official Journal No. 91 of 18-4-2013.

the said consumption thresholds (see Table 4 below). EIUs having consumption exceeding 4, 8 or 12 GWh/month would then obtain first a reduction based on consumption blocks (as any other final user reaching those thresholds) and then the additional reduction reserved to EIUs.

Table 4: A3 components for non-EIUs in January 2014 (in c€ per kWh)

	0-4 GWh / month	4-8 GWh / month	8-12 GWh / month	Above 12 GWh / month
Low voltage	5.879			
Medium voltage	4.828		2.897	
High voltage	4.863	2.432		1.459 ²²

- (23) The decision No. 467 of the AEEGSI of 24 October 2013 also introduced as of 1 January 2014 the Ae component, intended to generate the financing for the measure in favour of EIUs. The Ae component is constituted only of a variable part in c€ per kWh. Similarly to the A3 component, the value of the Ae was differentiated according to the type of user, type of connection and level of consumption (see Table 5 below). EIUs were exempted from the Ae component.

Table 5: Ae component applicable to non-EIUs in January 2014 (in c€ per kWh)

	0-4 GWh / month	4-8 GWh / month	8-12 GWh / month	Above 12 GWh / month
Low voltage	0.469			
Medium voltage	0.389		0.233	
High voltage and very high voltage	0.394	0.197		0.118

- (24) In January 2016, the Ae was suspended for the entire year and the zero charge as of 12 GWh/month was reintroduced also for non-EIUs connected in medium and high voltage. The Ae component was however reintroduced as of January 2017, while the zero charge as of 12 GWh/month remained for all final users connected in medium, high and very high voltage. In practice, however, this change did not have an important impact as Italy indicated that there were no non-EIUs having consumption above 12 GWh/month.

2.2. Additional reduction of the A components for EIUs between July 2013 and January 2018

- (25) As mentioned in recitals (19) to (22) above, reductions for EIUs were introduced on 1 July 2013 based on Article 39, paragraphs 1 and 3, of Law Decree No. 83/2012. The estimated annual budget of these additional reductions introduced with the 2013 reform was around EUR 600 million.

²² This represents 30% of 4.863c€/kWh.

2.2.1. Eligibility

- (26) Eligible undertakings needed to:
- Have a yearly energy consumption above 2.4 GWh/year;
 - Belong to the manufacturing sector according to the national *ATECO* (NACE) classification;²³
 - Bear electricity costs representing at least 2% of their annual turnover;
 - Be connected at least in one point in medium, high or very high voltage.
- (27) Thus, undertakings connected in low voltage were not eligible for the measure. Italy explained that this exclusion was based on the presumption that users belonging to the manufacturing sector would normally not be connected to the low voltage grid. Additionally, based on historic data of a sample of undertakings, only in exceptional cases did users connected in low voltage reach the 2.4 GWh/year threshold.

2.2.2. Reduction rate for EIUs

- (28) For the monthly consumptions below 8 GWh for undertakings connected in medium voltage and below 12 GWh for undertakings connected to high voltage, as of 1 July 2013 the reductions were proportional to the beneficiaries' electro-intensity (defined as the relation between their electricity costs compared to their turnover). They ranged between 15% and 60% of the variable part (c€/kWh) of the A2, A3, A4, A5 and AS components of the general system charges – as illustrated in Table 6 (below). In addition, as mentioned above (see recitals (17) and (22)), EIUs benefitted from a full exemption from the A components for their consumption above 12 GWh/month and a 50% reduction of A components between 4 and 12 GWh/month when connected to high voltage or very high voltage grids.

Table 6: Reductions for EIUs

Electro-intensity	Reductions of A2, A3, A4, A5 and AS
Between 2% and 6%	15%
Between 6% and 10%	30%
Between 10% and 15%	45%
Above 15%	60%

- (29) Eligible EIUs were also exempted from paying the Ae charge.

2.2.3. Procedure by which the aid was granted

- (30) To demonstrate they were eligible for the reductions for EIUs, the undertakings had to present a declaration to the CSEA, on a yearly basis (by October) with reference to the previous year. The CSEA would verify the declarations and

²³ Starting from 2015, sectors of the extractive industry included in Annex 3 or Annex 5 (with an electro-intensity of at least 20% according to the point 189) of the EEAG – were added to eligible sectors. The prevision was implemented by AEEGSI with Deliberazione n. 81/2017/R/eel.

publish a list of eligible undertakings, i.e. all companies that have demonstrated fulfilment of eligibility criteria. The benefits in 2013 were granted on the basis of a deposit/balance mechanism: the companies obtained a payment calculated on the basis of 2012 data on consumption and electro-intensity. Once the 2013 data were available, the amount paid was verified and adjusted accordingly. As it appeared that 10% of the undertakings that qualified as electro-intensive in 2013 based on 2012 data, actually did not qualify any longer according to 2013 values and were thus asked to return the contribution received, the system of the advanced payment was abolished in 2014. The Italian authorities explained that the aid is paid out only after the verification of the eligibility criteria.

- (31) So far, only the aid for 2013 and 2014 has been distributed to eligible undertakings. For 2014, the list of eligible undertaking has been determined based on the requests filed and has been published²⁴ in December 2016²⁵ pending the Commission's decision on the notified measure.

2.2.4. Sectors mainly concerned and consumption pattern

- (32) The number of undertakings identified on the basis of the above mentioned criteria was approximately 2 900 in 2013 (with approximately 140 undertakings still being verified at the time of the submission of information), of which approx. 1 300 were operating in sectors included in Annex 3 of the Energy and Environmental Aid Guidelines (EEAG)²⁶, and 1 200 operating in sectors included in Annex 5 of the EEAG and had an electro-intensity of 20% and around 400 operating mostly in the manufacturing of metal products (excluding machines and equipment) sector or in other sectors such as textile, printing and reproduction of recorded media, food industry and manufacturing of other non-metallic mineral products.
- (33) The information provided by Italy also showed that in terms of the number of companies, most companies on the list were active in the food industry, textile industry, paper industry, chemical industry, plastic industry, and metal industry (production and transformation) (approx. 2500 companies).
- (34) In terms of volumes of electricity concerned by reductions, those companies represent circa 50 000 GWh/year out of a total of around 57 000 GWh/year. The information further indicated that several sectors never reached the 12 GWh/month threshold and thus never had access to the exemption applying to the third consumption block (food and beverage industry for instance) while the chemical industry, refineries, the plastic industry, the metallurgical industry and the industry producing computer and electronic equipment consumed together 13 050 GWh/year above the 12 GWh/month consumption threshold (out of a total of 13 175 GWh consumed in the third consumption block by companies identified by Italy as fulfilling the criteria mentioned under recital (26) above).

²⁴ See http://energivori.ccse.cc/resources/pdf/Elenco_Energivori_2014_del_15-12-16.pdf. The list contains around 2900 companies.

²⁵ Italy explained that aid for 2014 has been distributed excluding EIUs that could have obtained reductions going beyond the thresholds set out in the EEAG.

²⁶ Communication from the Commission — Guidelines on State aid for environmental protection and energy 2014-2020, OJ C 200, 28.6.2014, p. 1–55

- (35) Finally, the information provided shows that for some sectors, none of the companies on the list are connected to the high voltage level or the vast majority is connected to the medium voltage and/or the low voltage only (manufacturing of leather goods, printing and reproduction of recorded media, furniture manufacturing, manufacturing of motor vehicles, trailers and semitrailers, textile industry, food industry). And for other sectors containing some companies also connected to the high voltage level, they do not exceed the first consumption block (i.e. the 4GWh/month threshold) (printing and reproduction of recorded media, manufacturing of motor vehicles, trailers and semitrailers).

2.3. The revision of the tariff structure and of the reductions for EIUs as of 1 January 2018

2.3.1. The revision of the tariff structure

- (36) In accordance with Law No. 21/2016 converting Decree Law No. 210/2015, a new tariff structure for all general system charges is being designed by the AEEGSI. A consultation document that the AEEGSI has approved on the 24 May 2016 envisaged a structure abolishing the consumption blocks system. Pursuant to Article 6, paragraph 9, of Law Decree No. 244/2016 such tariff structure shall enter into force as of 1 January 2018.
- (37) From 1 January 2018 Italy will split costs financed by A3 tariff in:
- (a) “A3*”: is the share of A3 component used to finance support to renewable energies and also cogeneration under the old scheme called CIP 6/92 and described under recital (10). It is equal to the revenue from the whole A3 component minus support to energy from non-biodegradable waste;
 - (b) “Other A3”: is the share of A3 component used to finance support to energy from non-biodegradable waste.
- (38) For all A components other than A3*, the tariff will consist of an amount resulting from the application of a single coefficient ($K_{OG^{oth}}$) to the network tariffs. The coefficient will be identical for all non-household users, irrespective of the voltage level of their connections. The coefficient will be obtained by dividing the amount of the general system charges to be collected from these levies from all non-household users (including all undertakings) by the total network charges revenues from these same non-households users. As network tariffs are trinomial (i.e. composed of a rate per connection point, a capacity rate – per kW – and a consumption rate – per kWh) the application of that coefficient will lead to a trinomial charge.
- (39) For the financing of A3* instead, the new tariff structure will be composed by a trinomial part, similar to the one described above, but also by a uniform consumption charge, applied in a non-selective manner to electricity withdrawn from the grid at all connection levels, by analogy to the network charges. In particular:
- The trinomial component will be calculated by applying a multiplication factor, $K_{OG^{res}}$ (identical for all voltage levels) to the network tariffs. The multiplication factor will be obtained by dividing the share of A3* to be

collected from this component from all non-households users by the total network charges revenue collected from all non-household users;

- The uniform consumption charge consists of a fixed amount to be paid per kWh of electricity withdrawn from the public grid, calculated by dividing the share of A3* not financed by the trinomial component by the total amount of electricity withdrawn from the grid by non-household users. Such rate will be identical for all non-household users.
- (40) The balance between the uniform consumption charge and the trinomial component will be defined by Italy and can vary in time. As an example, Italy indicated that a possible composition of the system could be 30% trinomial component and 70% uniform consumption charge.

- (41) The K_{OG} coefficients (respectively for A3* and for all other system charges) are to be calculated according the following formulae:²⁷

$$K_{OG^{res}} = \frac{\alpha * ER_{A3^*}}{ER_{NT^{nh}}}$$

$$K_{OG^{oth}} = \frac{ER_{OG^{oth}}}{ER_{NT^{nh}}}$$

where:

$K_{OG^{res}}$ is the multiplication factor for financing the share of A3* costs to be covered by the trinomial component

α is a percentage expressing the part of A3* costs to be covered by the trinomial component

ER_{A3^*} is the Expected Revenue for financing the share of A3* costs allocated to non-household users (estimated according to last available estimate of demand)

$ER_{NT^{nh}}$ is the Expected Revenue from Network Tariffs applied to all non-household electricity customers (estimated according to last available estimate of demand)

$K_{OG^{oth}}$ is the multiplication factor for financing all costs other than A3*

$ER_{OG^{oth}}$ is the Expected Revenue for financing the share of all other system charges than A3* costs, allocated to non-household users (estimated according to last available estimate of demand).

Moreover, the uniform consumption charge to be paid for each kWh (identical for all voltage levels) in order to cover the part of A3* costs that will not be covered by the trinomial tariff is calculated according to the following formula:

$$FR_{OG^{res}} = \frac{(1 - \alpha) * ER_{A3^*}}{ED_{ELE^{nh}}}$$

Where:

$FR_{OG^{res}}$ is the uniform consumption charge (in EUR/MWh) for financing A3* costs not financed by the trinomial component

$ED_{ELE^{nh}}$ is the Expected Demand, i.e. the total amount of electricity expected to be withdrawn from the public grid by non-household users

and α and ER_{A3^*} have the same meaning as above.

²⁷

For further details see consultation paper of the Authority n. 255/2016/R/eel of 24 May 2016. As a mere example, and depending on the values set for the general system charges and the estimates of demand at the specific moment in time, Italy indicated that a first estimation, based on 4th quarter 2016 network tariff and system charges, could be $K_{OG^{res}} = 0.683$ and $K_{OG^{oth}} = 0.314$.

2.3.2. *The revision of the reductions for EIUs*

2.3.2.1. Eligibility

- (42) Italy explained that once the tariff structure of the general system charges is revised, the reductions granted to EIUs will also be revised (with entry into force on 1 January 2018, see Article 6 paragraph 9 of Law Decree No. 244/2016).
- (43) Undertakings eligible for reductions of general system charges will be:
- (a) Operating in sectors covered by Annex 3 of the EEAG;
 - or
 - (b) Operating in sectors covered by Annex 5 of the EEAG and having an electro-intensity (calculated in accordance with Annex 4 of the EEAG, thus based on GVA) of not less than 20%;
 - or
 - (c) Included in the energy-intensive list for 2013-2014 (thus already benefitting from reductions from the financing of the RES in the past, even if not meeting the criteria set in the EEAG);
 - and
 - (d) having an annual consumption above 1 GWh/year.
- (44) The Italian authorities argued that undertakings with an annual consumption below 1 GWh/year would not have an interest in applying for reductions as the administrative costs related to such an application would offset the benefits.²⁸

2.3.2.2. Aid amount calculation

- (45) The reductions will apply only to charges dedicated to A3*.
- (46) Reductions for energy-intensive undertakings will be as follows:²⁹
- (a) Undertakings operating in sectors listed in Annex 3 and 5 of the EEAG with an electro-intensity of at least 20% (calculated on the basis of the methodology set out in Annex 4 of the EEAG) will contribute to A3*

²⁸ Italy provided an example of an undertaking with consumption of 0.9 GWh/year, with a medium voltage off-take point. For such user, on the basis of their calculations, the reduction could be in the order of EUR 13 000, assuming that such undertakings falls within the second reduction band (prudentially high, in their opinion, in relation to the types of activities covered by this consumption band). Italy explained that the related administrative and technical costs would be of approximately EUR 14 000, with variability to specific aspects and with a maximum possible value of EUR 18 000 (EUR 2 500/3 000 for the application and for its review by an external auditor, and EUR 12 000/15 000 related to the obligation to perform an energy audit as indicated by Article 8, paragraph 3, of Legislative Decree No. 102/2014).

²⁹ Italy confirmed that the general principles of this system will also apply to autogenerators. However, given the need for collecting specific data on this category of undertakings, complete information about this measure, as well as the specific adjustment plan, will be provided to the Commission later.

costs for a minimum of 0.5% of their GVA (by reference to paragraphs 189 and 190 of the EEAG) or, if more favourable, by paying a contribution equal to 15% of the A3* charges paid by an equivalent non eligible undertaking;

- (b) Energy-intensive undertakings operating in a sector included in Annex 3 of the EEAG with an electro-intensity below 20% (calculated in accordance with Annex 4 of the EEAG³⁰) will benefit from a reduction of A3* charges dependent on their electro-intensity³¹ based on turnover, ensuring there is a minimum 15% contribution;
 - (c) Other undertakings included in the 2013-2014 energy-intensive undertakings lists will only benefit from a reduction of RES support costs dependent on their electro-intensity³² based on turnover, ensuring a minimum 20% contribution.
- (47) The Italian authorities indicated that they will consider integrating the electro-intensity with an index based on international trade exposure, in which trade intensity will be analysed at the level of the sector, based on NACE codes. This plan is outside the scope of this decision.
- (48) The Italian authorities further indicated that they could consider in the future the possibility for undertakings operating in sectors included in Annex 3 of the EEAG with an electro-intensity below 20% (calculated on the basis of Annex 4 of the EEAG³³) of contributing a minimum of 4% of the GVA. However, such possibility is outside the scope of this decision and will have to be notified separately by the Italian authorities.
- (49) Finally, the Italian authorities committed to re-notifying the scheme 10 years after this decision.
- (50) The estimated annual budget of the scheme concerning the reductions for EIUs as of 1 January 2018 is between EUR 1 000 million and EUR 1 500 million. The

³⁰ For the calculation of the electricity consumption of the undertaking used to determine the electro-intensity within the meaning of Paragraph 3 of Annex 4 to the EEAG, Italy will use the arithmetic mean of the electricity consumption over the most recent 3 years for which data is available as there are no standard electricity consumption energy efficiency benchmarks available for the industry.

³¹ As an example:

Electro-intensity referred to turnover (Article 39 Law Decree n. 83/12)	Contribution to costs related to A3*
2% < i < 6%	85-95%
6% < i < 10%	60-65%
10% < i < 15%	40-45%
i > 15%	15-20%

³² See footnote 31 above.

³³ The price of energy will be the same as the one for consumers with similar levels of consumption and will be calculated by the Authority based on the price of electricity on the market, network tariffs, taxes and general system charges without reductions.

final amount will depend among others on the number of undertakings that will benefit of the 0.5% GVA, on the EIUs number with consumption of at least 1 GWh/year and on the final decision on the shares of contribution to A3* (see recital (40) above).

2.4. The adjustment plan

- (51) In order to bring the reductions for EIUs (implemented since 1 July 2013) and the reductions granted to large consumers based on consumption blocks in line with the provisions of the EEAG, on 30 June 2015 Italy submitted an adjustment plan starting from year 2011 and ensuring that the minimum contributions requested by the EEAG will be paid by 2019.
- (52) The undertakings benefitting from the degressive tariff system based on consumption blocks which will be included in the adjustment plan have the following characteristics:
- At least one connection point to the grid in high or very high voltage;
 - An energy consumption above 150 GWh/year.
- (53) Italy has submitted evidence showing that all undertakings with consumption below 150 GWh/year have paid at least the benchmark rate for all A components, including Ae, when it became applicable. This conclusion results from the fact that undertakings with monthly consumptions below 12 GWh/month (144 GWh/year) were subject to pay the tariffs of the first, second and third consumption blocks. They therefore only paid tariffs that are higher or at least equal to the flat average tariff that would be applicable if no reductions would apply ("flat rate"). Italy has submitted various calculations to illustrate this. They can be summarized by the following example based on 2013 and 2014 (replicable for all years after 2011):
- (54) For 2013:
- The value of the flat rate for the total A components was of 2.327 c€/kWh, calculated by dividing the total amount paid by all high voltage users and the total volume of consumption for high voltage users;
 - The mean value of the fixed part was 13 832.31 c€/connection point;
 - The mean value for the first consumption block (0-4 GWh/month) was 4.980 c€/kWh;
 - The mean value for the second consumption block (4-8 GWh/month) was 2.491 c€/kWh;
 - The mean value for the third consumption block (8-12 GWh/month) was 2.491 c€/kWh;
 - The mean value for the fourth consumption block (above 12 GWh/month) was 0 c€/kWh.

(55) For 2014:

- The value of the flat rate for the total A components was of 2.547 c€/kWh, calculated by dividing the total amount paid by all high voltage users and the total volume of consumption for high voltage users;
- The mean value of the fixed part was 14 467 c€/connection point;
- The mean value for the first consumption block (0-4 GWh/month) was 5.265 c€/kWh;
- The mean value for the second consumption block (4-8 GWh/month) was 2.634 c€/kWh;
- The mean value for the third consumption block (8-12 GWh/month) was 2.634 c€/kWh;
- The mean value for the fourth consumption block (above 12 GWh/month) was 1.580 c€/kWh.

(56) The threshold of 150 GWh/year is prudential with respect to the result of the following calculation in which consumption X would be around 200 GWh/year:

For 2013:

$$2.327 * \frac{X}{100} = \frac{13832.31}{100 * 10^6} + 4.980 * 4 * \frac{12}{100} + 2.491 * 4 * \frac{12}{100} + 2.491 * 4 * \frac{12}{100} + 0 * \frac{X - 12 * 12}{100}$$

For 2014:³⁴

$$2.547 * \frac{X}{100} = \frac{14467}{100 * 10^6} + 5.265 * 4 * \frac{12}{100} + 2.634 * 4 * \frac{12}{100} + 2.634 * 4 * \frac{12}{100} + 0 * \frac{X - 12 * 12}{100}$$

(57) Only one undertaking connected in medium voltage exceeded the 8 GWh/month limit, for a total of 2 GWh/year above the 8 GWh/month threshold. The information provided shows that this undertaking paid at least 90% of A components.

(58) In addition, the Italian authorities have shown that undertakings with a consumption level below 150 GWh/year and eligible under Italian law for additional reductions for EIUs described under recital (26) above have contributed at least to the minimum amount required under the EEAG compared to total A components. This is based on the observations made by Italy that the A3 component used to finance renewable support and cogeneration (i.e. excluding the share of CIP 6/92 used to finance production of electricity from non-organic waste and described in the table as A3*) has represented at least 91% of all A components since July 2013 (when the additional reductions were introduced), as can be shown from the table below:

³⁴

The calculation for 2014 is particularly prudential as it assumes that the company was eligible for an exemption of the A surcharge above 12 GWh/month although that would only be the case if the company fulfilled the criteria for being considered electro-intensive within the meaning of Article 39, paragraphs 1 and 3 of Law Decree No. 83/2012.

Table 7: General system charges in place in the period 2011-2015

		I trim 11	II trim 11	III trim 11	IV trim 11	I trim 12	1 aprile 2012	1 maggio 2012	III trim 12	IV trim 12	I trim 13	II trim 13	III trim 13	IV trim 13	I trim 14	II trim 14	III trim 14	IV trim 14	I trim 15	II trim 15	III trim 15	IV trim 15
A3* su Atot																						
MT																						
fisso		82%	86%	87%	88%	89%	89%	91%	91%	92%	92%	92%	93%	93%	93%	93%	93%	93%	93%	93%	93%	93%
scaglioni	1	85%	88%	90%	90%	94%	94%	95%	94%	94%	93%	93%	94%	94%	94%	93%	93%	92%	94%	93%	94%	94%
	2	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	94%	93%	93%	92%	94%	93%	94%	94%
AT e AAT																						
fisso		85%	88%	89%	90%	91%	91%	93%	93%	93%	93%	94%	94%	94%	94%	94%	94%	94%	94%	95%	95%	95%
scaglioni	1	84%	88%	90%	90%	93%	93%	95%	94%	94%	93%	93%	93%	93%	94%	93%	93%	91%	93%	92%	92%	93%
	2	85%	87%	89%	89%	93%	93%	95%	94%	94%	93%	93%	93%	93%	94%	93%	93%	91%	93%	92%	92%	93%
	3	84%	88%	90%	90%	93%	93%	95%	94%	94%	93%	93%	93%	93%	94%	93%	93%	91%	93%	92%	92%	93%
	4	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	94%	93%	93%	92%	93%	92%	92%	93%

Ratio (A3*+Ae) / (all A)

		Q1/13	Q2/13	Q3/13	Q4/13	Q1/14	Q2/14	Q3/14	Q4/14	Q1/15	Q2/15	Q3/15	Q4/15
MT													
fisso		92%	92%	93%	93%	93%	93%	93%	93%	93%	93%	93%	93%
scaglioni	1	93%	93%	94%	94%	94%	94%	94%	93%	95%	94%	94%	94%
	2	NA	NA	NA	NA	94%	94%	94%	93%	95%	94%	94%	94%
AT e AAT													
fisso		93%	94%	94%	94%	94%	94%	94%	94%	94%	95%	95%	95%
scaglioni	1	93%	93%	93%	93%	94%	93%	93%	92%	93%	93%	93%	93%
	2	93%	93%	93%	93%	94%	93%	93%	92%	93%	93%	93%	93%
	3	93%	93%	93%	93%	94%	93%	93%	92%	93%	93%	93%	93%
	4	NA	NA	NA	NA	94%	93%	93%	92%	93%	93%	93%	93%

(59) As the maximum reduction envisaged by Article 93 of the Law Decree No. 83/2012 is equal to 60% of all system charges, all undertakings with a consumption below 150 GWh/year have paid at least 33%³⁵ of A components used to finance the support to renewable energies and cogeneration and the totality of the A components used to finance other policy measures. In addition, Italy submitted calculations showing that even if the exemption from the Ae component is taken into account, all undertakings with a consumption below 150 GWh/year have paid at least 29%³⁶ of the A components used to finance the

³⁵ From July 2013 to December 2013 all undertakings with consumption below 150 GWh/year have benefitted from a reduction of 60% or less of all system charges. This means that they have paid at least 40% of all system charges. In the same period considered (Q3 and Q4 2013) the A3* component accounted for at least 93% of all A components (% for the fixed part for medium voltage users in Q3 2013). This means that at maximum the A components used to finance policy measures different from the support to renewable energies and energy efficiency measures represented 7% of all components. Thus, as the part of A components used to finance other policy measures needed be paid in full, subtracting this 7% from the 40% of all system charges that was certainly paid means that they have indeed contributed to at least 33% of A components used to finance the support to renewable energies and energy efficiency measures.

³⁶ From January 2014 to December 2015 all undertakings with consumption below 150 GWh/year have benefitted of a reduction of 60% or less of all system charges. In addition, they were exempted from paying the Ae component. As in those years the Ae component accounted for at maximum 7% of all system charges, they have paid at least 37% of all system charges (40% of 93%). In the same period considered (from Q1 2014 to Q4 2015) the component for the support to renewable energies and energy efficiency measures (A3 + Ae) accounted for at least 92% of all A components (% for the variable part for high voltage users in Q4 2014). This means that at maximum the A components used to finance policy measures different from the support to renewable energies and energy efficiency measures represented 8% of all components. Thus, as

support to renewable energies and energy efficiency measures and the totality of the A components used to finance other policy measures.

- (60) Concerning the benefits that energy intensive users with an annual consumption above 150 GWh/year have been granted since 1 July 2013, Italy has explained that it cannot be excluded that total reductions granted resulted in companies *de facto* benefitting from reductions also on A components not aimed at financing the support of renewable energies and cogeneration. Adjustments might thus be needed to bring the perimeter of the reductions only to the A3* costs. In order to provide definitive figures, GVA figures will have to be certified by the undertakings (calculations are now based on informal survey data or estimations) and the acquisition of consumption data for the individual undertakings from network operators has to be completed.
- (61) The electro-intensity index based on GVA will be calculated on the basis of Annex 4 of the EEAG, however:
- As regards consumption (first element of the numerator) and GVA (denominator), for the 2011 calculation the 2011 values will be taken into account, for the 2012 calculation the average values of 2011 and 2012 will be considered, and for the 2013 one the average values of 2011, 2012 and 2013 will be taken into account;
 - For the price of electricity (second element of the numerator) the sum of the price of electricity on the market, network tariffs, taxes and the benchmark “flat rate” value of general system charges will be considered (see recital (53) above).
- (62) Once the electro-intensity index is calculated (with respect to the GVA), the respect of the minimum contributions in line with the EEAG will be verified:
- (a) the lowest between 15% of the contribution to A3* costs and 0.5% of the GVA, for undertakings operating in sectors listed in Annex 3 or 5 of the EEAG, with electro-intensity (calculated with respect to the GVA) above 20%;
 - (b) the lowest between 15% of the contribution to A3* costs and 4% of the GVA, for undertakings operating in a sector listed in Annex 3 with an electro-intensity below 20%;
 - (c) 20% of the A3* for undertakings included in the 2013/2014 lists but operating in sectors other than those listed in Annex 3 or 5 of the EEAG or operating in a sector included in Annex 5 of the EEAG and having an electro-intensity below 20%;
 - (d) 100% of contribution to A3* costs for undertakings not eligible to any of the reductions above.

the part of A components used to finance other policy measures needed be paid in full, subtracting this 8% from the 37% of all system charges that was certainly paid means that they have indeed contributed to at least 29% of A components used to finance the support to renewable energies and energy efficiency measures.

(63) The contribution to A3* costs will be calculated as:

$$\frac{E}{D} \%$$

where:

E is the contribution paid in respect to A3* costs and is calculated as D-C

D is the A3* charge expressed as a flat benchmark

C is the total amount of reductions enjoyed by the relevant undertaking (consumption blocks +EIUs reductions + exemption from Ae component) and is calculated as A-B

A is the amount to be paid for all A components expressed as a flat benchmark

B is the amount actually paid by the relevant undertaking for all A components

(64) The undertakings which did not pay the relevant minimum contribution calculated as set out in recital (62) above at least in one of the years starting from 2011 will be included in the adjustment plan.

(65) Based on currently available data, a list of 35 undertakings with an annual consumption above 150 GWh/year has been produced by the Italian authorities, highlighting the contribution paid by each undertaking and eventually the recuperation needed (see table below).

Table 8: List of 35 undertakings with an annual consumption above 150 GWh/year

[...]

(66) In case an undertaking has not respected the minimum contributions envisaged under recital (62) above, a progressive adjustment is imposed towards the relevant minimum contribution. Italy indicated that for the 35 undertakings listed above, this minimum contribution is 15% of A3* (or 0.5% or 4% of their GVA if applicable and more favourable) as the undertakings concerned are either operating in sectors listed in Annex 3 or in sectors listed in Annex 5 of the EEAG but have an electro-intensity (calculated with respect to the GVA) above 20%. The progression applied is described in the table below.

Table 9: Adjustment towards minimum contributions

Year	% of the minimum contribution requested³⁷
2011	5%
2012	10%
2013	15%
2014	20%
2015	30%
2016	45%
2017	60%
2018	80%
2019 ³⁸	100%

- (67) The Italian authorities committed to ensure that the contributions paid by all beneficiaries of reductions since 2011 correspond to the minimum contributions that they have to pay under the adjustment plan. Should that not have been the case in the past, the contribution due by those beneficiaries under the adjustment plan for the years 2014 – 2016 will be increased by an amount equal to the difference between the contributions already paid and the contributions due under the adjustment plan (i.e., by way of reductions of the benefit they were initially entitled to).

2.5. Transparency and monitoring by the State

- (68) The Italian authorities have committed to complying with the transparency, reporting and monitoring requirements contained in Paragraph 3.2.7 of the EEAG.
- (69) The AEEGSI is responsible for verifying that the undertakings applying for the reductions are eligible and, otherwise, shall take measures to ensure that the overpayment is recollected. Additionally, Italy committed to suspend the application of the reductions if the beneficiary still has at its disposal an earlier unlawful aid that was declared incompatible by a Commission decision, until the beneficiary has reimbursed the total amount of unlawful and incompatible aid and the corresponding recovery interest.

3. ASSESSMENT

3.1. Presence of State aid

- (70) A measure constitutes State aid in the meaning of Article 107 (1) TFEU if it is *"granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain*

³⁷ To be calculated on the minimum contributions set out in recital (62) above applicable to the relevant beneficiaries.

³⁸ As of 2019, the undertakings included in the 2013/2014 lists but operating in sectors other than those listed in Annex 3 or 5 of the EEAG or operating in a sector included in Annex 5 of the EEAG and having an electro-intensity below 20% will pay in full the A3 component used to finance cogeneration support.

undertakings or the production of certain goods [...] in so far as it affects trade between Member States".

- (71) In determining whether a measure constitutes State aid within the meaning of Article 107(1) of the Treaty, the Commission has to verify whether the measure:
- confers an advantage on certain undertakings or certain sectors (selective advantage);
 - is imputable to the State and involves State resources;
 - distorts or threatens to distort competition; and
 - is liable to affect trade between Member States.
- (72) The Commission has identified the following aspects of the general system charges that are liable to constitute an advantage: a) the reductions based on consumption blocks granted to large consumers until 2018 and described in sections 2.1.1 to 2.1.3; b) the reductions granted to EIUs since 2013 on A components (including the exemption granted to the same EIUs from the Ae component) described under sections 2.2 and 2.3.2. The Commission has concluded that those advantages constituted State aid within the meaning of Article 107(1) TFEU for the reasons set out in sections 3.1.1 to 3.1.3 below.

3.1.1. Selective advantage

3.1.1.1. Consumption blocks

- (73) The exemptions granted before 2008, between 2008 and 2013 and between 2014 and 2018 to undertakings connected to medium, high and very high voltage, on certain consumption blocks constitute an advantage to these undertakings. In fact, by virtue of those exemptions they are relieved of a general system charge that they would normally have had to pay also on the electricity consumed within the relevant consumption block. This, in turn, decreases their average charge per consumption unit compared to users not benefitting from the exemption (see also Figure 1 and Figure 2 above). The same is valid for reductions granted between 2008 and 2013 and between 2014 and 2018 to undertakings connected to medium, high and very high voltage, on certain consumption blocks.
- (74) In the case of a charge, the appropriate criterion for establishing the selectivity of the advantage at issue consists in determining whether the measure introduces, between operators that are, in the light of the objective pursued by the general system charge concerned, in a comparable factual and legal situation, a distinction that is not justified by the nature and general structure of that system (see, to that effect, *Commission v MOL*,³⁹ *World Duty Free*⁴⁰ and *AT Ökostrom*⁴¹).
- (75) In the case at hand, Italy has submitted that the reductions and exemptions for large electricity consumptions were in the logic of the general system charges because this system of charges would be based on degressivity and because

³⁹ See case C-15/14 P *Commission v MOL*, EU:C:2015:362, paragraph 61.

⁴⁰ See case C-20/15 P, *Commission v World Duty Free Group*, EU:C:2016:981, paragraph 60.

⁴¹ See case T-251/11, *Austria v Commission*, EU:T:2014:1060, paragraph 96.

already in the period before 2018 it was building on the structure of transmission fees, which were also degressive.

- (76) The Commission however observes that the degressivity does not correspond to the normal taxation principle applied that governs the general system charges but reserved to consumers with large energy consumption. As described under recitals (13), (14), (17) and Table 3, the tariff is uniform on the low voltage level and de facto also on the medium voltage level. There is a theoretical reduction of charges for users connected to medium voltage when they reach 8 GWh of monthly consumption but this reduction can technically not be reached under standard connection conditions as explained under recital (15) so that it can for this reason alone already not be viewed as the normal taxation principle. In addition, even on the high voltage level, the exemptions are available only as of a certain level of consumption (12 GWh/month) which cannot be reached by undertakings connected to the high voltage level under the standard technical conditions described in recital (15) above. The information provided by Italy confirms that the 12 GWh/month is reached by undertakings almost exclusively active in a very limited number of sectors (see recital (34) above).
- (77) Also, the information provided by Italy shows that the number of undertakings connected to the high or very high voltage level is very limited and that the majority of them are active in the manufacturing sector (see recital (16) above). But even within the same manufacturing sector, it can be observed that not all companies will be connected to the high voltage or will exceed on a regular basis the 4 GWh/month threshold (see recital (35) above). The Commission observes that in most cases, this will depend on the size of their business. Within the same sector, SMEs will generally not be connected to the high voltage level or not reach the 4 GWh/threshold.
- (78) In addition, the wording of Article 3, paragraph 11, of Law No. 79/1999 and Article 39, paragraph 3, of Law Decree No. 83/2012 suggests that the benefit of reduced charges for large energy consumption was aimed to be reserved to certain consumers only, namely those with significant energy consumption or EIUs. Also the use of the terms "reductions" and "exemptions" already points to an exception to the normal taxation principle and not to a general rule of degressivity applicable to all undertakings. The Commission notes in this respect that Italy acknowledged during the investigation that the consumption blocks on the high voltage level were set as a proxy to grant decreasing tariffs to EIUs, which confirms that the degressivity does not correspond to the normal taxation principle but to an exception to the principle that a uniform tariff per voltage level applies. This is also confirmed by the "*isogettito* constraint" described under recital (18) above, which implies that when reductions are modified, it is necessary to ensure that the average tariff per kWh for a given voltage level must be the same before and after the reform. Such constraint could not be applied in a system that would truly be based on a degressivity principle.
- (79) The Commission could also observe that the degressivity of the charge in function of increasing consumption is not a feature of Italian transmission tariffs (by contrast to different tariffs per voltage level for instance). In other words, the degressivity is not a principle that governs transmission network charges. Indeed, while transmission charges also have a component based on consumption, the tariff per consumption unit does not decrease when consumption increases but remains constant.

- (80) Finally, the Commission observes that the selectivity of the reductions based on consumption blocks and their distortive and discriminatory impact on markets have been the reason why the reductions have been changed regularly since it was perceived that they were creating distortions on markets where the large energy consumers were active (see recitals (14) and (19)).
- (81) Italy indicated that as of 2018 it would abolish consumption blocks and change the general system charges structure (see section 2.3.1 above).
- (82) The Commission verified if the revised structure of the general system charges would constitute State aid.
- (83) The Commission notes that as of 2018 the A components will reflect the network charges, which are based on the principle of cost recovery. As such, the revised A components will be built on the same trinomial structure and will consist in the network charges multiplied by a coefficient that will be the same for all non-household users. The coefficient will vary according to the financial needs of the support for the various measures financed from the A components. As the measures financed from the A components and in particular the A3* relate to electricity that is injected into the public grid, building the general system charges on network charges seems a coherent choice and does not appear selective given that the charges would be determined based on a multiplying coefficient that is the same for all non-household consumers. As the A3* component requires particularly important financial means, it will be complemented by a charge on consumption (expressed in €/MWh of electricity withdrawn from the grid) that will however be the same for all non-household users and is therefore not selective.

3.1.1.2.Reductions for EIUs (including the exemption from the Ae)

- (84) Without the reductions described under sections 2.2 and 2.3.2. and introduced by Article 39 of Law Decree No. 83/2012 and implementing decrees, the undertakings concerned would have paid the tariff described in Table 4 above. Article 39 of Law Decree No. 83/2012 and the implementing decrees thus provide certain undertakings with an advantage as they reduce the charges that those undertakings would otherwise have had to pay. This advantage is selective. First, it is limited to undertakings active in the manufacturing sector. Second, it is limited to undertakings connected to at least the medium voltage grid and which reach a certain level of consumption, thereby excluding companies active in the same sector but not reaching that level of consumption because they are smaller for instance. Finally, it is limited to companies reaching a certain level of electro-intensity.
- (85) Also after the 2018 reform, Italy indicated that it would maintain reductions for EIU that would apply to both the trinomial charges and the uniform consumption charge. Those reductions remain an advantage for those EIU as they alleviate the burden that would result for them from the application of the normal general charge system. They qualify as a selective advantage as they are limited to undertakings active in certain sectors and reaching a certain level of electro-intensity and consumption.

3.1.2. State resources and imputability

- (86) For both the exemptions and reductions granted to large consumers for certain consumption blocks and the reductions and exemptions granted to EIUs on the A components, the advantage is imputable to the State as the advantages were stemming from legislation.
- (87) In particular as regards the exemptions and reductions granted to large consumers for certain consumption blocks, they were introduced based on Article 3, paragraph 11, of Law No. 79/1999 which provided that for consumers with large energy consumption, the tariff should decrease when their consumption increases. This provision was then further implemented by the AEEGSI, a public body. Also the additional reductions for energy intensive users introduced in 2013 stem from Article 39 of Law Decree No. 83/2012 and implementing decrees and are thus also imputable to the State. In addition, eligibility for reductions in the latter case is verified by the CSEA, a public body (see recital (9) above).
- (88) Both the exemptions and reductions granted to large consumers on the A components for certain consumption blocks and the reductions and exemptions granted to EIUs on the A components are financed from State resources.
- (89) According to settled case-law, only advantages which are granted directly or indirectly through State resources are to be regarded as aid within the meaning of Article 107(1) TFEU. The distinction between aid granted by the State and aid granted through State resources serves to bring within the definition of aid not only aid granted directly by the State, but also aid granted by public or private bodies designated or established by the State.⁴² Thus, resources do not need to transit through the State budget to be considered as State resources. It is sufficient that they remain under public control.⁴³
- (90) As results from established case-law and constant practice, proceeds of levies imposed by the State and which are then managed and apportioned in accordance with the provisions of the legislation constitute State resources (*Vent de Colère*⁴⁴).
- (91) In this case, the Commission notes that the A components have been imposed by law on final consumers (see Article 3 paragraph 11 Law No. 79/1999) and are transferred in accounts managed by the CSEA, a public entity, on the one hand and the GSE, an undertaking fully owned by the Ministry of Economy and Finance, of which it follows the strategic and management orientations, on the other hand (see recital (9), including footnotes 7 and 8). The resources are thus under State control and qualify as State resources.
- (92) In addition, the General Court concluded on an A component that existed before (the A6 component⁴⁵) that it constituted a State resource and the measures

⁴² To this effect, see case C-78/76 March 1977 *Steinike & Weinlig* EU:C:1977:52, paragraph 21, joined cases C-72/91 and C-73/91 *Sloman Neptun* EU:C:1993:97, paragraph 19, and the case-law cited in the EEG 2014 Decision, paragraph 81.

⁴³ See case C-482/99 *France v Commission* EU:C:2002:294, paragraph 37, and the case-law cited, in the EEG 2012 Decision, paragraph 83.

⁴⁴ See case C-262/12 *Vent de Colère* EU:C:2013:851, paragraph 25.

⁴⁵ The A6 component has in the meantime been abolished. In the past it served to finance compensatory measures paid to certain electricity producers in order to cover stranded costs (see

financed from this A6 component were financed from State resources. Indeed, in the *Iride* case⁴⁶ the General Court observed that it was under State control but even State ownership: “concerning compensation granted to energy distributors or producers from a special account administered by a public body and funded by the revenue from the application of a specific component of the electricity tariff, charged to all final customers, the sums redistributed to the recipient must be categorised as State resources, not only because they are under constant State control, but also because they are State property before being redistributed”. The General Court concluded that the resources were not only under State control but even constituted the property of the State as it had been established that funds held by the *Cassa Conguaglio per il Settore Elettrico* (which has now become the CSEA, see Footnote 7) were State property (see *Iride* ruling, paragraph 31).

- (93) As a result, also the reductions and exemptions resulting from the consumption blocks are financed from State resources. Those reductions constitute an additional burden for the State. Any reduction in the amount of the surcharge has the effect of reducing the amounts collected from the consumers concerned. They have to be regarded as leading to losses in revenues that subsequently have to be recovered from other consumers (consumers with consumption below 4 GWh/month or with consumption below 12 GWh/month) via an increased surcharge. The Commission notes in this respect that Italy explicitly indicated (see recital (18) above) that the A component for the high and very high voltage levels had to be increased for the first consumption block (i.e. for the consumption block below 4 GWh/month) to finance the reductions above that threshold.⁴⁷ Also it was necessary to abolish the full exemption for the consumption block 8 GWh/month – 12 GWh/month and replace it by a reduction in order to maintain a full exemption above 12 GWh/month.
- (94) As to the additional reductions granted to EIUs, they are financed from one of the A components (the Ae component), i.e. from a State resource as demonstrated above. The exemption from the Ae itself is also financed from State resource as by this exemption the State is renouncing to levying a State resource.

3.1.3. *Effect on trade and impact on competition*

- (95) The beneficiaries are active in sectors with high international trade exposure (like the chemical industry, paper industry, metallurgical industry, see recital (33) above for instance), and as such, the measures at stake are likely to distort the competition on the markets in which they are active and affect trade between Member States. Therefore, the support scheme for EIUs constitutes State aid in the meaning of Article 107 TFEU.

3.1.4. *Conclusion*

- (96) For the reasons set out in sections 3.1.1 to 3.1.3 above, the Commission concludes that the:

also Commission decision of 1 December 2004 in case N 490/2000 – Italy – Stranded costs of the electricity sector).

⁴⁶ Case T-25/07 *Iride Spa and Iride Energia Spa v Commission* EU:T:2009:33.

⁴⁷ See also Case T-47/15 *Germany v Commission* (EEG 2012) EU:T:2016:281, paragraph 112, and Case T-251/11 *Austria v Commission* EU:T:2014:1060, paragraph 76.

- Reductions of and exemptions from A components granted to large consumers for certain consumption blocks and applicable from 2001 to 2017,
- Reductions of and exemptions for EIU from A components granted to EIU since July 2013

constitute State aid within the meaning of Article 107(1) TFEU.

3.2. Legality of the aid

- (97) The Commission regrets that Italy has put in place reductions of and exemptions from A components granted to large consumers for certain consumption blocks and reductions of and exemptions from A components granted to EIU since July 2013 breaching its obligation under Article 108(3) TFEU. Since aid has been granted before Italy started notifying it, such aid is illegal.

3.3. Compatibility of the aid

- (98) As the reductions and exemptions from A components granted to large consumers for certain consumption blocks and applicable from 2001 to 2017 and the reductions and exemptions for EIU from A components granted to EIU since July 2013 were granted in respect of the same A components, are serving the same purposes (as mentioned under recital (78) the consumption blocks were used as proxy for EIUs), were granted to a large extent to the same beneficiaries and were then cumulated, the Commission has assessed the compatibility of both types of reductions and exemptions together and has in particular taken into account their cumulative impact on aid intensity.
- (99) Although reductions were initially granted on all A components, Italy demonstrated that all (save one) beneficiaries of reductions de facto paid in full all A components other than the A3 dedicated to financing the support of renewables and cogeneration (see recitals (53), (59) and (60) above). In addition, the commitments provided by Italy and described under recital (67) ensure that even in the cases where other components were not paid in full, the difference will be deducted from the reductions that the beneficiaries were entitled to for the period 2014-2016 under the adjustment plan. The Commission therefore can limit its compatibility assessment to the reductions that de facto have been and will be granted in relation to the A3 component dedicated to financing the support of renewables and of cogeneration as well as to the Ae component that is financing those reductions.
- (100) In order to determine the applicable compatibility rules, the Commission considers, on the basis of a recent Court judgment (case C-189/15),⁴⁸ that the A3 component constitutes an indirect tax on electricity. Furthermore, it should be pointed out that the A3 component pursues a specific objective,⁴⁹ namely

⁴⁸ In that judgment the Court of Justice provided guidance to the Italian Consiglio di Stato on whether the A3 component could qualify as "fiscal reductions" within the meaning of Article 17(1) Directive 2003/96/EC.

⁴⁹ In its ruling judgment of 27 February 2014 in *Transportes Jordi Besora* (C-82/12, EU:C:2014:108, paragraph 30), the Court has indicated that a tax is regarded as pursuing a specific purpose within the meaning of Article 1(2) of Directive 2008/118/EC when the proceeds of that tax have to be used for the purpose of reducing the environmental costs specifically linked to the

financing of the support for RES and cogeneration installations. Therefore, in the Commission opinion it does not qualify as an environmental tax as defined in the EEAG (see paragraph 19(15) of the EEAG). In contrast to environmental taxes, the A3 component lacks the behavioural steering effect that environmental taxes within the meaning of paragraph 167 of the EEAG should have (see paragraphs 167 and 181 of the EEAG⁵⁰), as it does not aim at changing the behaviour of the A3 component payers but at providing funding of specific activities (energy productions from RES and cogeneration installations).

- (101) In light of these considerations, the Commission has therefore assessed the reductions of the A3 component dedicated to financing the support of renewables on the basis of section 3.7.2. of the EEAG (Aid in the form of reductions in the funding of support for energy from renewable sources). As aid has been granted already before the entry into force of the EEAG, the Commission has also assessed, on the basis of section 3.7.3. (Transitional rules for aid granted to reduce the burden related to funding support for energy from renewable sources) of the EEAG, the way in which Italy applied the transitional rules to ensure the past aid is compatible with the internal market.
- (102) Since Sections 3.7.2 and 3.7.3. of the EEAG apply solely to reductions in funding of support for energy from renewable sources, the assessment criteria laid down herein may not be applied directly to the A3 reductions for financing the support of cogeneration installations. The Commission has therefore assessed the reductions of the A3 component dedicated to financing cogeneration support directly under the Article 107(3)(c) of the Treaty.

3.3.1. Aid in the form of reductions in the funding of support for energy from renewable sources

- (103) Reductions granted to EIUs aim at securing a sufficient financing base for the support measures themselves. Point 182 of the EEAG provides that, whilst the financing of energy support schemes should in principle be recovered in a way which does not discriminate between the consumers on whom its costs are imposed, Member States may wish to grant partial compensation for the additional costs of such schemes to undertakings particularly affected by the financing costs who would otherwise be put at a significant competitive disadvantage. Those targeted reductions may be needed to secure a sufficient financing base for support to energy from renewable sources and hence help reaching the renewable energy targets set at EU level.

consumption of the energy source on which that tax is imposed, so that there is a direct link between the use of the revenue and the purpose of the tax in question. This is the case of the A3. It is dedicated to the financing of renewable and CHP electricity and has to be used in a specific manner in order to support renewable and CHP electricity so as to reduce the environmental costs associated to electricity production and consumption (i.e. CO₂ emissions) with the consequence that there is a direct link between the use of the A3 and the purpose of the A3.

⁵⁰

According to Paragraph 167 of the EEAG environmental taxes are imposed in order to increase the costs of environmental harmful behaviour, thereby discouraging such behaviour. By contrast, Paragraph 181 of the EEAG indicates that charges to finance support to energy from renewable sources do not as such target a negative externality and accordingly have no direct environmental effect. They are therefore different from environmental taxes within the meaning of Paragraph 167 of the EEAG, even if they may also result in higher electricity prices.

- (104) Under Section 3.7.2 of the EEAG reductions granted to energy-intensive users on electricity charges used to finance support to renewables are considered as compatible if they are:
- limited to sectors and undertakings that are electro-intensive and exposed to international trade as identified on the basis of the criteria set out in points 185-186 of the EEAG.
 - proportionate, i.e. limited to the reduction levels set out in points 187 to 190 of the EEAG.
- (105) Compatibility with those criteria is examined below.
- (a) Aid limited to sectors and undertakings that are electro-intensive and exposed to international trade
- (106) Points 185-186 of the EEAG provide that the aid in the form of reductions in the funding of support for energy from renewable sources should be limited to sectors that are exposed to a risk to their competitive position due to the costs resulting from the funding of support to energy from renewable sources as a function of their electro-intensity and their exposure to international trade. Accordingly, the aid can be granted if the undertaking belongs to the sectors listed in Annex 3 to the EEAG. The aid can also be granted to undertakings active in sectors with a trade intensity of at least 4% at Union level if the undertaking has an electro-intensity of at least 20%.
- (107) As described under recital (43) (a) and (b) above, as of 2018, reductions will be granted to undertakings from all sectors included in Annex 3 and to undertakings active in sectors listed in Annex 5 to the EEAG having an electro-intensity of minimum 20% in line with points 185 and 186 of the EEAG.
- (108) The aid is granted in the form of a reduction from charges and is granted either ex ante in combination with a monitoring system or ex post based on verification of concrete eligibility and proportionality (see recital (30) above), in line with point 192 of the EEAG.
- (109) The Commission further notes that Italy undertook to apply the methodology described in Annex 4 to the EEAG for determining whether the undertakings concerned reaches 20% of electro-intensity (see recitals (43) (b) and (46) (a) and (b)). For the purpose of determining the electricity consumption used to calculate the electro-intensity within the meaning of Annex 4 of the EEAG, Italy will use the arithmetic mean of the electricity consumption over the most recent 3 years for which data is available. This is in line with point 186 and Annex 4 of the EEAG given that there are currently no standard electricity consumption energy efficiency benchmarks available for the industry as the Commission concluded in its decision of 20 December 2016 in case SA.44679 (2016/N)⁵¹.
- (110) Point 187 of the EEAG provides that Member States can impose additional eligibility criteria provided that within the eligible sectors the choice of beneficiaries is made on the basis of objective, non-discriminatory and

⁵¹ Commission decision of 20 December 2016 in case SA.44679 (2016/N) - Germany – Modification of the method to define electro-intensity under the EEG, recital 302-306.

transparent criteria and that the aid is granted in principle in the same way for all competitors in the same sector if they are in a similar factual situation.

- (111) Italy requires first that a minimum consumption threshold of 1 GWh/year is reached (see recital (43) above). As the 1 GWh/year threshold is set in advance and publicly available and can be determined based on objective data, the Commission concludes that that criterion is objective and transparent. The minimum consumption threshold has been criticised by the complainant as being discriminatory. In this respect, the Commission observes that the consumption threshold has been decreased to 1 GWh/year and has been introduced for reasons of administrative simplification. It is based on the observation made by Italy that the costs associated to the request for a reduction for undertakings not reaching 1 GWh/year of consumption would be higher than the value of the reduction. Italy provided a numerical example described in footnote 28. For this reason, the Commission finds that the above threshold does not induce any discrimination between competitors in the same sector.

(b) Proportionality

- (112) Point 188 of the EEAG provides that the aid is considered proportionate if the aid beneficiaries pay at least 15% of the financing costs without reduction. Point 189 of the EEAG allows Member States to further cap the contribution of beneficiaries to a certain percentage of the GVA.
- (113) The system established by Italy complies with the minimum required own contributions: the beneficiaries must pay at least 15% of the A3* used to finance the support to renewables, or at least 0.5% of their GVA (for undertakings with electro-intensity of at least 20%) (see recital (46)(a) and (b)).
- (114) The aid intensity is modulated in accordance with the electro-intensity of the undertaking concerned (see recital (46)(b) and footnote 31). The electro-intensity used for this modulation is determined based on turnover and not on GVA. In this respect, the Commission observes that the specific definition of electro-intensity based on GVA contained in Annex 4 to the EEAG only applies to determine eligibility of undertakings in accordance with point 186 of the EEAG and in order to implement the GVA cap of 0.5% referred to under Point 189 of the EEAG. Member States can however modulate the aid intensity further by using other criteria, provided the aid is granted in the same way for all competitors in the same sector if they are in a similar factual situation. Italy has explained that it has chosen the turnover for the modulation of the aid intensity because the turnover tends to be more stable than GVA over time. The Commission first notes that expressing the electro-intensity of an undertaking as the ratio between electricity costs and turnover is an alternative but also relevant way of determining the electro-intensity of undertakings. In addition, a modulation of the aid in function of the electro-intensity of the beneficiary (based on turnover) is in line with the rationale of the reductions in the sense that the impact of renewable surcharges on electro-intensive companies will be higher when the electro-intensity of the company increases. The Commission therefore concludes that the modulation of the aid intensity in function of the electro-intensity of the beneficiaries (based on turnover) is non-discriminatory and in line with point 187 of the EEAG.

3.3.1.1. Conclusion

- (115) Based on the above, the Commission considers that the reductions from the A3 component dedicated to financing the support of renewables to be implemented by Italy as of 2018 are compatible with the internal market on the basis of the EEAG (Section 3.7.2).

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

- (116) For the aid already granted, on the basis of Article 39 of Law Decree No. 83 of 12 June 2012 and also on the basis of the consumption blocks structure of the general system charges (Article 3, paragraph 11 of Law No. 79/1999) and that will continue to be granted until the reform described under section 2.3.1 enters into force in 2018, the reductions potentially covered several charges, not all of them used to finance RES support. Nevertheless, Italy undertook to verify to what extent the respective reductions (in total), would comply with the EEAG requirements, if they are apportioned entirely to the charges used to finance RES support and CIP6/92 charges used to finance co-generation support.⁵² For this assessment, Italy calculated the hypothetical flat rate that the undertakings would have had to pay, if there had been no reductions available for consumptions above certain thresholds (the flat rate that the users would have paid if there had been no consumption blocks, see recital (53) above). Then the total reduction was used to calculate the *de facto* own contribution of the undertakings (see recital (63) above) and this has been compared to the minimum required by the EEAG (see recital (64) above). The calculations provided by Italy show that for companies consuming less than 150 GWh/year, the part of the charges that beneficiaries of reductions and exemptions paid a) always covered in full the A components dedicated to financing measures different from renewable and cogeneration support, b) covered only a part of the charges used to finance RES support and co-generation support but c) this part was always more than 29% of the theoretical flat rate (see recital (59) above), and thus more than the minimum required from past beneficiaries which do not qualify as electro-intensive (20%, see point 197 of the EEAG⁵³) and more than 15% which is the minimum required from beneficiaries qualifying as electro-intensive users (see point 188 of the EEAG).
- (117) For companies consuming more than 150 GWh/year (35 undertakings in total based on first estimates, see recital (65) above), Italy provided information showing that all except one undertaking paid in full the A components dedicated to financing measures different from renewable and cogeneration support⁵⁴ (see

⁵² The Commission finds that, even if the adjustment plan is also linked to co-generation support, its starting point in 2011 is justified for the reasons explained in recitals (142) to (143) below. See, in this respect, also Commission Decision of 22 May 2017 in Case SA.42393 – Germany – Reduced CHP charges, recitals 161 and 167, to which this Decision refers on this point.

⁵³ For beneficiaries that would have not been eligible if the requirements of the EEAG were applied, but who benefitted of such aid before the entry into force of the EEAG, point 197 of the EEAG provides that by 2019 at the latest, those beneficiaries must pay at least 20% of the charge. In the case of the Italian case, this relates to all beneficiaries who were eligible for reductions under Italian law before 1 July 2014.

⁵⁴ On the reductions of the cogeneration surcharge, see section 3.3.3 below.

recital (65) and Table 8 above). Italy has however committed to adjust, in future payments, in full the part of the reduction that exceeded the A3* from the undertaking concerned (see recital (67) above).

- (118) The information provided also shows that the 35 companies identified as having potentially not paid the minimum⁵⁵ required are all electro-intensive within the meaning of points 185 and 186 of the EEAG. Italy has committed to include in the adjustment plan all beneficiaries that benefitted from reductions above what allowed under the EEAG (see recitals (64)-(66) above). As explained by Italy, if the contribution paid by the relevant beneficiary does not correspond to the amount required under the adjustment plan, the difference between the contribution already paid and the contribution due under the adjustment plan will be added to the contribution due by the concerned undertakings for the years 2014-2016 under the adjustment plan (see recital (67)).
- (119) In line with points 193 and 194 of the EEAG, Member States are to apply eligibility and proportionality criteria set out in Section 3.7.2 of the EEAG at the latest by 1 January 2019. Aid granted in respect of a period before that date will be considered compatible if it satisfies the same criteria, or if it complies with an adjustment plan.
- (120) Point 195 of the EEAG allows the adjustment plan to be based on progressive adjustment to the aid levels resulting from the application of the eligibility and proportionality criteria set out in section 3.7.2, in order to avoid abrupt disruptions for individual undertakings. Point 196 of the EEAG clarifies that to the extent that aid was granted in respect of a period before the date of application of the EEAG, the adjustment plan shall also provide for a progressive application of the eligibility and proportionality criteria for that period. In line with point 197 of the EEAG, to the extent that aid in the form of reduction or exemption from the burden related to funding support for electricity from renewable sources was granted before the date of application of the EEAG to undertakings that are not eligible under Section 3.7.2, such aid can be declared compatible provided that the adjustment plan foresees a minimum own contribution of 20% of the additional costs of the surcharge without reduction, to be established progressively and at the latest by 1 January 2019.
- (121) The adjustment plan was drafted by Italy taking duly into account the above EEAG requirements. For all the aid already granted, first Italy verified if the eligibility and proportionality criteria set out in section 3.7.2 were complied with. For the undertakings for which these criteria were not fully met, for all the period of support, the provisions of the adjustment plan are applicable (see recitals (64)-(67) above).
- (122) In line with point 197 of the EEAG, Italy verified if the beneficiaries which are not eligible under Section 3.7.2 of the EEAG paid at least 20% of the relevant surcharges. Where this was the case no further adjustments were foreseen, but

⁵⁵ In line with points 187 and 188 of the EEAG, the minimum contribution required was considered to be for the beneficiaries from the sectors included in Annex 3 to the EEAG, as well as for those from sectors included in Annex 5 of the EEAG and having an electro-intensity higher than 20%: 15% of the theoretical flat rate, or 4 % of the gross value added, or 0.5% of the GVA, for undertakings having an electro-intensity of at least 20 %.

Italy undertook to continue to verify if the condition is respected, also in the future. Where this was not the case, a progressive adjustment will be applied aiming to ensure that the 20% minimum contribution is reached by 1 January 2019. As of 2019 the maximum reduction provided to these beneficiaries will be 80% of the part of the A3* charge used to finance renewable support (see recital (46)(c) and footnote 38 above).

- (123) The Commission notes that the adjustment plan submitted by Italy in the framework of this notification is based on a very extensive and detailed analysis of the situation of the beneficiaries, taking into account all relevant economic factors linked to the renewable policy. The adjustment plan was also notified to the Commission by 1 July 2015 (see recital (51) above). Therefore the Commission considers that points 198-200 of the EEAG are complied with.

3.3.3. Reductions from the A3 component used to finance support for cogeneration

- (124) The Commission notes that Italy committed that before the 2018 reform it will ensure that reductions are limited the A components used to finance support for renewables and cogeneration (the A3*) and that beneficiaries pay in full all charges other than renewable and cogeneration charges (see recital (99)). The Commission also notes that in the future (with the 2018 reform described in section 2.3), Italy will limit reductions to the surcharges dedicated to financing support for renewables and cogeneration, that is A3* (see recital (45)).
- (125) The qualification of the reductions from the A3 component used to finance cogeneration is the same as for the reductions from the A3 component used to finance RES: for the reasons stated above (recitals (100) to (102) above), it does not fall under the definition of "environmental tax". However, as also explained at recital (102), Section 3.7.2 of the EEAG applies only to surcharges that do not qualify as environmental taxes, dedicated to the funding of renewable support (that is in this case the A3 component used to finance support to renewables), but does not cover the same surcharges dedicated to the funding of cogeneration.
- (126) Furthermore, no other guidelines are applicable to the reductions granted on the A3 component used to finance cogeneration support. However, the Commission may declare an aid measure compatible directly under Article 107(3)(c) TFEU if it is necessary and proportionate and if the positive effects for the common objective outweigh the negative effects on competition and trade.
- (127) The above conditions can be considered as fulfilled if the following questions can be positively replied:
- (a) Is the aid measure aimed at a well-defined objective of common interest?⁵⁶
 - (b) Is it targeted towards a situation where aid can bring about a material improvement that the market alone cannot deliver (for example because it addresses a market failure)?

⁵⁶ Case T-162/06 *Kronoply v Commission* ECLI:EU:T:2009:2, especially paragraphs 65, 66, 74 and 75.

- (c) Is the aid well designed to deliver the objective of common interest (necessity of the aid)?⁵⁷ In particular:
- i. Is the aid measure an appropriate and necessary instrument, i.e. are there other, better-placed instruments?
 - ii. Is there an incentive effect, i.e. does the aid change the behaviour of firms?
 - iii. Is the aid measure proportional, i.e. could the same change in behaviour be obtained with less aid?
- (d) Are the distortions of competition and the effect on trade limited, so that the overall balance is positive?

3.3.3.1. Objective of Common Interest

- (128) The Commission has examined whether the reductions from the A3 component used to finance support to cogeneration aim at a well-defined objective of common interest.
- (129) Italy has submitted on the one hand that the promotion of cogeneration is an objective of common interest. On the other hand, it has submitted that the reductions of the A3 aimed at preserving the competitiveness of Italian companies subject to the A3 component (that are electro-intensive users and facing international competition) and that these reductions helped increasing the acceptance for the support measures financed from the A3 component, i.e. support to power and heat cogeneration and power and steam cogeneration next to the support for renewable. Those support measures aim at improving the sustainability of electricity production in Italy, increasing energy efficiency and reducing the CO₂ emissions linked to electricity production.
- (130) The promotion of highly efficient cogeneration is indeed recognized as an objective of common interest given that cogeneration increases the energy efficiency of energy production and reduces carbon emissions (see in this respect paragraphs 138-139 of the EEAG and Commission decision of 24 October 2016 in case SA.42393 (2016/C) – Germany - opening the formal investigation procedure on reductions on CHP⁵⁸-surcharge in Germany⁵⁹ (the "Opening decision in case SA.42393"), recitals 148-149).
- (131) The Commission observed in its Opening decision in case SA.42393 that since the CHP-surcharge was dedicated to the funding of the support for high-efficiency cogeneration, it indirectly contributed to the achievement of the objectives pursued by those support measures, i.e. reducing the environmental impact of electricity production by increasing the energy efficiency of energy production and reducing CO₂ emissions in the electricity sector, which the Commission found to correspond to an objective of common interest. This

⁵⁷ Case T-187/99 *Agrana Zucker und Stärke v Commission* ECLI:EU:T:2001:149, paragraph 74; Case T-126/99 *Graphischer Maschinenbau v Commission* ECLI:EU:T:2002:116, paragraphs 41-43; Case C-390/06 *Nuova Agricast* ECLI:EU:C:2008:224, paragraphs 68-69.

⁵⁸ CHP stands for Cogeneration of Heat and Power.

⁵⁹ OJ C 406 of 4.11.2016, p. 21.

reasoning also applies to the A3 component used to finance cogeneration support in Italy.

- (132) The Commission also observed that reductions from CHP-surcharges dedicated to financing support for cogeneration of heat and power could indirectly contribute to the objective of the support measures financed from the surcharges (i.e. the increase of energy efficiency of energy production and the reduction of CO₂ emissions linked to electricity consumption) because they can help securing a sufficient financing base for the support measures themselves in a similar way to how reductions in the funding of support for renewable electricity help securing a sufficient financing base for renewable electricity support (see section 3.7.2 of the EEAG and in particular point 182 thereof).
- (133) Hence, if reductions are needed to secure the financing of cogeneration support in Italy, they would also indirectly contribute to the objectives pursued by the cogeneration support measures financed from the A3.
- (134) The Commission notes in this respect that the Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency ('Energy Efficiency Directive')⁶⁰ has set a 20% headline target on energy efficiency and provided for indicative national efficiency targets to which highly efficient cogeneration installations can make an important contribution. In addition Member States are, under the obligation to assess their potential for the implementation of energy efficiency measures, including cogeneration installations and to deploy the identified potential⁶¹. Also, on 23 October 2014 the European Council endorsed the target of 27% improvement in energy efficiency for 2030.⁶² As a result, financing needs to finance support for cogeneration can also be significant. This is the case for Italy which was able to increase the use of cogeneration for energy production with CHP electricity reaching 12.7% of the gross electricity generation in Italy in 2013. In addition, in Italy the cogeneration surcharge adds to the surcharges already in place to finance renewable support. Together with the renewable charge the cogeneration charge represented a significant share of the total A components (92% in 2013-2014). Both surcharges are grouped into the A3 as they both aim at financing support measures introduced to reduce the environmental impact of energy production on climate change. To avoid that electricity consumers particularly affected by the financing costs of the promotion of highly efficient cogeneration (and renewable energy) can be put at a significant competitive disadvantage, Italy granted partial reductions from the A3. Indeed, bankruptcy or delocalisation of too many undertakings might erode the financing basis. Instead of paying a reduced surcharge, the relevant companies would not contribute at all to the financing implying an even higher financial effort from other consumers to finance the

⁶⁰ Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC Text with EEA relevance (OJ L 315, 14.11.2012, p. 1).

⁶¹ See also Article 14 of Energy Efficiency Directive. See also Article 10 thereof read in combination with Article 6(1) of Directive 2004/8/EC the European Parliament and of the Council of 11 February 2004 on the promotion of cogeneration based on a useful heat demand in the internal energy market and amending Directive 92/42/EEC.

⁶² Conclusions of the European Council of 23-24 October 2014.

support of cogeneration, again reducing acceptability of the surcharge and hence of the support of cogeneration as such.

- (135) Based on those elements, the Commission considers that the reductions of the A3 component dedicated to the financing of cogeneration support can be considered as contributing to a common objective as they were necessary to maintain the A3 components in place, thus ensuring support to cogeneration (and) renewables.

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

- (136) The Commission observed in its Opening decision in case SA.42393 (recital 270) that if reductions of cogeneration surcharges are too high or awarded to too many sectors or electricity consumers, the overall funding of cogeneration-support might be threatened as well and the public acceptance for cogeneration may be equally hampered. At the same time, distortions of competition and trade may be particularly significant. In order to assess necessity of the reductions, the Commission indicated in its Opening decision in case SA.42393 (recital 275) that it would use the eligibility criteria for reductions from renewable charges as guidance (paragraphs 185-187 of the EEAG). This seems particularly appropriate given that on the one hand the cogeneration support measures that are financed from the A3 component serve the same environmental objective as the renewable support measures also financed from the A3 (fight against climate change by reducing CO₂ emissions resulting from electricity production) and that on the other hand, the A3 component dedicated to cogeneration adds up to the A3 component dedicated to renewable support. Both parts of the A3 are structured and levied in a similar way. As the A3 is levied in proportion to electricity withdrawn from the grid, it will impact in particular undertakings for which electricity costs represent an important share of gross added value and which cannot easily pass on their costs to consumers without losing important market shares given the intensity of the international trade of the sector in which they are active. Those are the undertakings that the criteria developed under points 185 to 187 of the EEAG aim at identifying.

- (137) The Commission further indicated in its Opening decision in case SA.42393 (recital 283) that it would use points 188 and 189 of the EEAG as guidance to assess the proportionality of the reductions of cogeneration-surcharges. This seems appropriate given that on the one hand the cogeneration measures that are financed from the A3 serve the same environmental objective as the support for renewable energy also financed from the A3 (fight against climate change by reducing CO₂ emissions resulting from electricity production by increasing energy efficiency) and that on the other hand the reductions aim at ensuring the sustainability of the financing of those support measures by limiting the burden for undertakings particularly affected by energy surcharges, while still requiring from them a sufficient own contribution. The criteria set out in points 188 to 189 of the EEAG aim at defining that equilibrium.

- (138) The Commission notes in this respect that most beneficiaries were electro-intensive users within the meaning of points 185-187 of the EEAG and that beneficiaries contributed the minimum level required, i.e. 15% of the charge (see recital (59)).

- (139) For beneficiaries who did not qualify as EIUs within the meaning of points 185-187 of the EEAG, Italy submitted an adjustment plan that provides for a progressive increase of their own contribution (see recital (66)). As of 2019 non eligible consumers will pay in full the A3* component used to finance cogeneration support (see recital (46)(c) and footnote 38 above).
- (140) The adjustment plan is a joint adjustment plan that is common to the reductions granted on the A3 for the part of the A3 used to finance renewable support measures and cogeneration support measures.
- (141) The Commission finds that the adjustment plan is justified for the same reasons for which adjustment plans are provided for under the EEAG for reductions of renewable charges. In particular, the adjustment plan avoids too high and too abrupt financial disruptions for individual undertakings that would result from the immediate application of the criteria set out in points 185 to 189 of the EEAG and in that sense also contributes to the sustainability of the financing of the CHP support as described under recital (132) above by maintaining acceptability of support and its continued secured financing.
- (142) The Commission finds that the starting point of the adjustment plan in 2011 is justified. Indeed in June 2010 the European Council agreed upon a 20% energy efficiency target to be reached by 2020. In the course of 2010 and 2011, the EU adopted several Action Plans and Communications⁶³ stressing the importance of energy efficiency and the need to step up efforts, including in energy generation and including through schemes, to increase energy efficiency. This together with the Energy Efficiency Directive induced Member States to step up support measures and surcharges started to increase as a result.
- (143) For the reductions of A3 used to finance cogeneration support measures applied prior to the starting date of the adjustment plan the Commission considers that in light of the development state of highly efficient CHP (period prior to the establishment of 20% EU-energy efficiency target) the amounts of reductions

⁶³ See Conclusions of the European Council of 17 June 2010. The Conclusions of the European Council of 17 June 2010 confirmed the energy efficiency target as one of the headline targets of the Union's new strategy for jobs and smart, sustainable and inclusive growth. Under this process and in order to implement this objective at national level, Member States are required to set national targets in close dialogue with the Commission and to indicate, in their National Reform Programmes, how they intend to achieve them. See also Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Energy 2020 - A Strategy for competitive, sustainable and secure energy (COM(2010) 639 final of 10.11.2010). It places energy efficiency at the core of the Union energy strategy for 2020 and outlines the need for a new energy efficiency strategy that will enable all Member States to decouple energy use from economic growth. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: See also Conclusions of the European Council of 4 February 2011 acknowledging that the Union energy efficiency target was not on track and that determined action is required to tap the considerable potential for higher energy savings in buildings, transport, products and processes. See also Communication of 8 March 2011 from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Energy Efficiency Plan 2011. The Communication confirmed that the Union is not on track to achieve its energy efficiency target. To remedy that, the Energy Efficiency Plan 2011 spelled out a series of energy efficiency policies and measures covering the full energy chain, including energy generation of heat and electricity and underlying that waste heat should be recovered where possible and a greater use of high efficient cogeneration should be made where possible.

awarded before 2011 could be considered as not fulfilling all the criteria in Article 107(1) TFEU and thus falling under the Regulation pursuant to Article 2 of Council Regulation (EC) No 994/98 which was applicable at the time (de minimis aid) or that the reductions granted from December 2008 until December 2010 would fall under the Temporary Community Framework for State aid measures to support access to finance in the current financial and economic crisis⁶⁴.

- (144) For beneficiaries who qualified as EIUs within the meaning of recital 185-187 of the EEAG, Italy demonstrated that all undertakings with consumption below 150 GWh/year paid at least 15% of A3 used to finance cogeneration support. For those who paid less, Italy submitted an adjustment plan that progressively adjusts their contribution to the minimum level required (see recital (66)). As of 2019, they will have to pay at least 15% of the surcharge.
- (145) Based on the elements above, including the amendments presented by Italy and the adjustment plan committed to, the Commission concludes that Italy demonstrated that the reductions of the cogeneration surcharge are necessary, appropriate, have an incentive effect, are proportionate and do not unduly distort competition and are thus compatible with Article 107(3)(c) TFEU.

3.3.4. Transparency and duration of the scheme

- (146) Member States are required under Section 3.2.7. of the EEAG to publish as of 1 July 2016 certain information related to beneficiaries of aid. The Commission takes note of Italy's commitment to comply with the transparency requirements.
- (147) While the national legal basis foresees no end date for the reduction of burdens arising from financing the RES support systems for EIUs, Italy has committed to re-notifying the measure after 10 years.

4. AUTHENTIC LANGUAGE

- (148) As mentioned under section 1 above, Italy has accepted to have the decision adopted and notified in English. The authentic language will therefore be English.

⁶⁴ OJ C 83, 7.4.2009, p.1.

5. CONCLUSION

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

However, it has decided, on the basis of the foregoing assessment,

- not to raise objections to the aid measures on the grounds that they are compatible with the internal market pursuant to Article 107 (3)(c) of the Treaty on the Functioning of the European Union.

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

<http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Your request should be sent electronically to the following address:

European Commission,
Directorate-General Competition
State Aid Greffe
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully
For the Commission

Margrethe VESTAGER
Member of the Commission

