Commission Decision (EU) 2019/767 of 31 July 2018 on State aid SA.36511 (2014/C) (ex 2013/NN) Caps applied by France to the CSPE surcharge (notified under document C(2018) 4975) (Only the French text is authentic) (Text with EEA relevance)

COMMISSION DECISION (EU) 2019/767

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to those articles[(1)], and having regard to their comments,

Whereas:

1. PROCEDURE

(1) On 11 October 2013, following preliminary contacts between the Commission departments and France in the course of 2013, France notified its onshore wind support scheme, which had been funded up to then by an electricity surcharge known as the 'contribution to the public electricity service' (*contribution au service public de l'électricité* – 'CSPE').

(2) As the scheme had entered into force prior to notification, on 29 November 2013 the case was transferred to the register of non-notified aid.

(3) By letter of 27 March 2014, the Commission informed France that it had no objections to support for onshore wind, but that it had doubts about the compatibility with the internal market of the reductions in the CSPE granted to self-generating consumers, large electricity consumers and electro-intensive consumers. Consequently, it informed France that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union ('TFEU') in respect of these CSPE reductions.

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(4) The Commission's decision to initiate the procedure ('the Opening Decision') was published in the *Official Journal of the European Union*. The Commission invited interested parties to submit their comments on the measures in question and on the possible application to the CSPE reductions of the Guidelines on State aid for environmental protection and energy 2014-2020 ('the 2014 Guidelines')[(2)].

(5) The Commission received comments from five interested parties: (i) Air Liquide, by letter of 3 November 2014; (ii) EDF, by letter of 17 November 2014; (iii) the RATP, by letter of 2 December 2014; (iv) the SNCF, by letter of 3 December 2014, and (v) the Union des Industries Utilisatrices d'Énergie (UNIDEN), by letter of 3 November 2014. These comments concerned, on the one hand, the existence of State aid and, on the other hand, the compliance of the measures with the TFEU and also with the 2014 Guidelines.

(6) France submitted its comments through a memorandum of 5 May 2014, supplemented by a memorandum of 22 October 2015. In this correspondence, after recapping the various CSPE reductions, France firstly asserted that the CSPE reductions enjoyed by self-generating consumers did not constitute aid. It then stated that the cap on the CSPE per site and the cap on the CSPE of 0,5 % of value added were compatible with the State aid rules.

(7) During the formal investigation, the Commission sent seven requests for information between 21 August 2014 and 27 October 2017. The French authorities in turn submitted 11 memoranda and information documents between 7 May 2014 and 12 December 2017. These exchanges of information concerned (i) clarification of the amounts paid in CSPE and reductions granted to certain types of beneficiary, (ii) the classification of the measures as State aid and legal analysis of their compliance with the State aid rules, and (iii) the presentation of an adjustment plan intended to lower the reductions in CSPE to levels compatible with the applicable State aid rules. The first adjustment plan proposed was presented in the memorandum of 4 November 2014 and was finalised in the memorandum of 23 November 2017.

2. DESCRIPTION OF THE MEASURES

(8) This section outlines the CSPE surcharge and the reductions in it granted for the period 2003-2015. It is the reductions that are the subject of this Decision.

2.1. Presentation of the CSPE

(9) The CSPE surcharge was introduced by Law No 2003-8 of 3 January 2003 on the gas and electricity markets and on the public energy service (*loi n° 2003-8 du 3 janvier 2003 relative aux marchés du gaz et de l'électricité et au service public de l'énergie*), 'Law No 2003-8'). The scheme described in this Decision predates the 2016 CSPE reform introduced by Amending Finance Law for 2015 No 2015-1786 of 29 December 2015 (*loi n° 2015-1786 du 29 décembre 2015 de finances rectificative pour 2015, LFR 2015*).

(10) The CSPE was intended to offset the extra costs associated with the public electricity service tasks borne by the incumbent electricity suppliers (EDF and local distribution companies). These extra costs stem mainly from the funding of four types of policy:

(a) They derive firstly from an obligation imposed on EDF or local distribution companies (*entreprises locales de distribution, ELD*) to purchase electricity generated by certain types of plant producing electricity from renewable energy sources (wind, photovoltaic, etc.). This component accounted for 39 % of the CSPE collected over the entire duration of the measures, i.e. 2003-2015.

(b) They also derive from the funding of high-efficiency cogeneration, which accounted for 25 % of the CSPE collected over the 2003-2015 period. In its memorandum of 20 December 2016, France stated that the CSPE was intended only to fund high-efficiency cogeneration. France there stated that this support had first taken the form of a purchase contract scheme applied between 1997 and 2001, which remunerated cogeneration facilities with an energy efficiency in excess of 65 %, and had subsequently taken the form of assistance, from 2013, for high-efficiency natural gas cogeneration facilities of more than 12 MW.

(c) The extra costs further arise out of compensation given to electricity generators in non-interconnected areas (Corsica or overseas departments) so that in the electricity price paid by the final consumer the generators do not pass on the difference between the generation costs they have to bear and the generation costs borne in mainland France, which are lower because they incorporate the lower cost of nuclear energy. This item accounted for 31 % of the total CSPE collected over the entire period in question, i.e. 2003-2015. The system for keeping electricity prices in Corsica and in the overseas departments equivalent to prices applied in mainland France is otherwise known as 'tariff equalisation' (*péréquation tarifaire*).

(d) Three per cent of these extra costs stem from implementing the social tariff known as the tariff for electricity as a 'basic necessity' (*produit de première nécessité*), and from covering some of the costs borne by electricity suppliers due to their financial participation in the scheme to help people living in poverty.

(11) The Commission notes that, in addition to these policies other policies were also funded out of the CSPE, albeit to a lesser extent. These measures accounted for less than 2 % of the CSPE collected. They mainly involved the following:

(1) Support granted between 2003 and 2015 to plants generating electricity by incinerating household waste. EDF and local distribution companies were under an obligation at the time to purchase the electricity generated by these plants at a price set by ministerial order. The extra costs borne by these operators were offset out of the CSPE. France considers that the proportion

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of renewable energy generated by these plants was 50 %, in accordance with the rules of the International Energy Agency (IEA) and Eurostat on energy statistics.

(2) Support for peak-demand facilities contributing to security of supply. These facilities are powered mainly by diesel and were built in the 1990s. They are called upon for a limited number of hours depending on the needs of the electricity system.

(3) Support for various measures (EUR 221 million over the 2003-2015 period): firstly, funding of firm capacity contracts to encourage independent generation (electricity generating facilities with an output less than 8 000 kVA, facilities designed to use the calorific value of urban waste), presented by France as being 'a useful addition' to the public electricity service; secondly, funding of purchase contracts for the output of various generators.

(12) Article L.121-7 of the Energy Code (*Code de l'Énergie*) provides that costs attributable to public electricity service tasks are to be offset by contributions payable by final consumers of electricity established in the national territory. All these items therefore represent a single extra cost for French consumers. The contribution was paid by all final consumers of electricity in proportion to the kilowatt-hours (kWh) consumed, including by electricity self-generators. Between 2003 and 2015, the CSPE changed as follows:

Changes in the amount of CSPE collected - 2003-2015

(EUR/MWh)

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
CSPE	3,0	3,3	4,5	4,5	4,5	4,5	4,5	4,5	9,0	10,5	13,5	16,5	19,5

Source: French Court of Auditors (*Cour des Comptes*) Report 2017.

(13) Where an eligible final consumer had exercised the rights granted in Article 22(III) of Law No 2000-108 of 10 February 2000 on the modernisation and development of the public electricity service (*loi n° 2000-108 du 10 février 2000 relative à la modernisation et au développement du service public de l'électricité*, 'Law No 2000-108'), and was supplied through the public transmission network or through a public distribution network, the consumer's contributions were collected by the operator responsible for the management of the network to which the consumer was connected, by way of a levy additional to the network usage tariff.

(14) The contributions collected by that operator were paid to the operators that bore the costs of the public service through the Caisse des dépôts et consignations ('CDC'). The CDC paid out this contribution, four times a year, to those operators that bore the costs that the sums collected were intended to offset. On 1 January each year, it paid the national energy ombudsman a sum equal to the amount of its budget.

(15) The CDC recorded these various transactions in a special account. The management fees incurred by the CDC were determined annually by the Ministers for the Economy and for Energy. Where the sum of the contributions collected did not correspond to the total costs recorded for the year, an adjustment was made the following year through the contributions payable for that year. If the sums payable were not collected in the course of the year, they were added to the amount of the charges for the following year[(3)].

(16) Every year, in its annual report, the Energy Regulatory Board (*Commission de régulation de l'énergie*, 'CRE') assessed the operation of the scheme covering these public electricity service costs. The amended Decree No 2004-90 (Decree No 2004-90 of 28 January 2004 on the compensation of public electricity service costs – *Décret n^{o} 2004-90 du 28 janvier 2004 relatif à la compensation des charges de service public de l'électricité*) organised how this compensation worked: every year, before 15 October, the CRE proposed to the Minister for Energy the estimated costs for the following year and the unit contribution per kWh consumed in France that would allow these costs to be financed. The CRE's proposal was based on statements of recorded costs for the previous year (N – 1) and on statements of estimated costs for the following year (N + 1). These statements were provided by the operators incurring the costs. As explained in recitals 14 and 15, the collection of contributions was managed centrally by the CDC.

(17) The CRE checked the amount of the recorded costs. The costs of supporting renewable energies corresponded to the difference between the amount of support and the market price received by the accountable operator selling this energy. The amount of compensation was thus determined by a market price. The CRE defined the method for determining this market price. It did not correspond to the actual market value that the accountable operator secured, but to a reference value based on various parameters (forward market price and spot price with different weightings depending on the sub-sector, intraday market price, settlement price for imbalances) that allowed the behaviour of a competitive market player to be reflected more accurately in order to encourage the accountable operator to be competitive.

(18) Without prejudice to the application of the penalties provided for by law, if, within two months of the date on which it became payable, payment of the contribution was not made or was insufficient, the CRE sent a reminder letter together with a penalty for late payment, which was set at 10 % of the amount of the contribution due. If payment was still not made by a person liable for these contributions, the Minister for Energy imposed an administrative penalty under the conditions laid down by Article 41.

(19) Between 2003 and 2015, the CSPE amount collected by the operator responsible for managing the network totalled EUR 36,9 billion, divided as follows:

CSPE amounts collected by EDF

(EUR million)

Source: Memorandum from the French authorities to the Commission departments, 20 December 2016.