C/2026/2825

27.5.2026

STATE AID – CZECHIA

State aid SA.117794 (2025/N) - Support for the construction and operation of two new nuclear units at the Dukovany site

Invitation to submit comments pursuant to Article 108(2) of the Treaty on the Functioning of the European Union

(Text with EEA relevance)

(C/2026/2825)

By means of the letter dated 22 December 2025, reproduced in the authentic language on the pages following this summary, the Commission notified Czechia of its decision to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union concerning the abovementioned aid/measure.

Interested parties may submit their comments within one month of the date of publication of this summary and the following letter, to:

European Commission,
Directorate-General Competition
State Aid Greffe
1049 9 Bruxelles/Brussel
BELGIQUE/BELGIË
Stateaidgreffe@ec.europa.eu

These comments will be communicated to Czechia. Confidential treatment of the identity of the interested party submitting the comments and/or of parts of the comments submitted may be requested in writing, stating the reasons for the request.

SUMMARY OF THE DECISION

The Czech authorities notified this measure on 2 October 2025.

The subject of this case is the State support for the construction and operation of two new nuclear units at the Dukovany site (i.e. Dukovany 5 and Dukovany 6), with a capacity of up to 976 MWe each. The Commission had already approved aid for the construction and operation of a single new nuclear reactor at the Dukovany site by Commission Decision C(2024) 2858 final of 30.4.2024 in case SA.58207 ([1]). The notified measure extends beyond the scope of the measure assessed in the abovementioned Decision, both in terms of the number of nuclear units concerned and the overall aid package and therefore requires a separate comprehensive assessment.

The aid package includes three main types of support:

— **a State loan** (Repayable financial assistance) with a low interest rate and current initial amount estimated around EUR 23-30 billion, covering the full construction costs;

— **a two-way contract for difference (CfD)** with a proposed duration of 40 years to ensure stable revenues for the nuclear power plant;

— a mechanism of **protection for policy changes and additional protection against adverse impacts**, to address the risk arising with the longevity of exposure to policy changes during the entire investment period.

The beneficiary of the measure is an entity called 'Elektrárna Dukovany II' (EDU II), owned by the Czech state (80 %) and ČEZ (20 %), the only nuclear power plant operator in Czechia. EDU II will be the Project promoter, responsible for strategic control and oversight of the Project, as well as the owner and operator of the new nuclear units. It will also be the beneficiary of the loan, the contracting party in the CfD, and will benefit from the Change of Law protection. Additionally, EDU II has benefitted from a capital contribution from ČEZ to finance activities necessary during the development phase of the project.

([1]) OJ L, 2025/429, 12.3.2025, ELI: http://data.europa.eu/eli/dec/2025/429/oj.

The objective of the measure is to help decarbonise the electricity system and reduce a capacity gap expected from the decommissioning of obsolete nuclear and coal power units in Czechia. The main goals pursued are decarbonisation, diversification of energy sources, and security of supply.

Construction works are expected to start in 2029, and the new-built nuclear reactors are expected to be commissioned as from 2036 (Dukovany 5) and as from 2037 (Dukovany 6) and have a lifetime of 60 years.

The Commission has concluded in the opening decision on the existence of aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union (TFEU). Regarding the compatibility of the measure with the Article 107(3)(c) of the TFEU, the Commission also concluded on the existence of a market failure and on the necessity of aid for the development of an economic activity.

Nevertheless, the Commission has doubts on the following elements of the compatibility assessment:

— **the appropriateness** (combination of the types of support, insufficient information about the protection for policy changes and additional protection against adverse impacts, as well as about the design of the CfD) **and proportionality** (duration of the CfD, methodological details regarding the revision of the strike price, strike price revisions linked to the protection for policy changes and additional protection against adverse impacts, analysis of the target return on equity, cost assumptions substantiating the financial model, overcompensation control mechanism) of the components of the aid package;

— **the limitations of the distortion of competition on the market** and more specifically on the design of the CfD; and whether the negative market effects will be kept to the minimum.

— **the compliance with other provisions of EU law** (compliance of the CfD with the design principles set out in Article 19d(2) of the Electricity Regulation).

Text of letter

The Commission wishes to inform Czechia that, having examined the information supplied by your authorities on the measure referred to above, it has decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union ('TFEU').

1. THE PROCEDURE

(1) Following pre-notification contacts, pursuant to Article 108(3) TFEU, the Czech authorities notified to the Commission on 2 October 2025 their intention to provide support to the construction and operation of two new nuclear units in Dukovany, Czechia (the "Project", the "notified measure" or the "measure").

(2) By Commission Decision C(2024) 2858 final of 30.4.2024 ("the 2024 Decision") in case SA.58207 ([1]), the Commission approved aid for the construction and operation of a single new nuclear reactor at the Dukovany site. The present notification is broader in scope, as it concerns an additional unit. The notified measure extends beyond the scope of the measure subject to the 2024 Decision, both in terms of the number of nuclear units concerned and the overall aid package and therefore requires a separate comprehensive assessment.

(3) The Commission requested additional information on 16 October 2025, which the Czech authorities provided on 21 and 23 October 2025.

(4) On 28 November 2025, the Czech authorities exceptionally agreed to waive their rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958 ([2]) and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE CONTEXT

2.1. Electricity generation in Czechia

(5) Czechia's electricity mix is currently dominated by coal- and nuclear-based generation. The following tables show the evolution of installed capacity and gross electricity generation between 2015 and 2024.

Table 1

Evolution of installed capacity in MW in Czechia from 2015 to 2024 (Source: Yearly report on the operation of the Czech electricity grid for 2024)

	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Total Czech Republic	**21,877.6**	**22,007.0**	**22,293.6**	**22,302.6**	**22,014.3**	**21,450.7**	**20,995.6**	**21,160.2**	**22,118.4**	**22,980.7**
Nuclear (NPP)	4,290.0	4,290.0	4,290.0	4,290.0	4,290.0	4,290.0	4,290.0	4,290.0	4,290.0	4,290.0
Thermal (TPS)	10,741.9	10,850.0	11,075.5	11,075.4	10,729.9	10,058.8	9,527.7	9,415.9	9,472.3	9,448.5
Combined cycle (CC)	1,363.3	1,363.5	1,363.5	1,363.5	1,363.5	1,363.5	1,363.5	1,363.5	1,363.5	1,363.4
Gas fired (GFPS)	855.6	874.0	896.0	910.9	937.7	962.3	983.8	1,013.1	1,064.4	1,242.0
Hydro (HE)	1,095.0	1,100.2	1,112.3	1,112.5	1,113.2	1,116.8	1,117.0	1,118.1	1,117.9	1,117.0
Pumped storage (PSHE)	1,171.5	1,171.5	1,171.5	1,171.5	1,171.5	1,171.5	1,171.5	1,171.5	1,171.5	1,171.5
Wind (WPP)	282.2	282.2	308.2	316.7	339.4	339.6	339.6	339.3	342.5	363.1
Photovoltaic (PV)	2,078.3	2,075.7	2,076.6	2,062.0	2,069.1	2,148.2	2,202.5	2,448.9	3,296.3	3,985.2

([1]) Commission Decision (EU) 2025/429 of 30 April 2024 on the measure State aid SA.58207 (2021/N) which Czechia is planning to implement to support the construction and operation of a new nuclear power plant at the Dukovany site (OJ L, 2025/429, 12.3.2025, ELI: http://data.europa.eu/eli/dec/2025/429/oj).

([2]) Regulation No 1 determining the languages to be used by the European Economic Community (OJ P 017, 6.10.1958, p. 385/58).

(6) According to data published by the Energy Regulatory Office ("ERO") of the Czech Republic ([3]), as shown in the Table 1 above, the structure of Czechia's electricity installed generation capacity from 2015 to 2024 shows a gradual shift in composition. Thermal capacity is the largest share (41% of total installed capacity) in 2024 at 9.45 GW, though it has slowly declined over the decade. Nuclear capacity has been stable at 4.29 GW, while the most significant growth has occurred in solar capacity, which nearly doubled from 2.1 GW to almost 4 GW, becoming the fastest-expanding renewable source. Overall, the system has been moving away from coal-heavy thermal generation toward greater solar integration while maintaining stable level of nuclear capacity.

Table 2

Evolution of gross electricity generation in GWh in Czechia from 2015 to 2024 (Source: Yearly report on the operation of the Czech electricity grid for 2024)

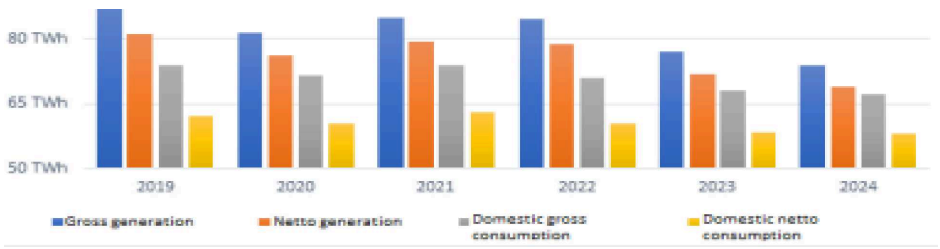
	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Gross electricity generation	**83,893.8**	**83,305.6**	**87,041.3**	**88,002.4**	**86,991.2**	**81,503.0**	**84,998.8**	**84,701.6**	**76,943.5**	**73,881.8**
Brown coal	35,945.2	36,228.1	36,978.1	37,733.8	35,172.0	29,073.6	31,407.1	34,305.6	27,800.5	25,159.1
Nuclear fuel	26,840.8	24,104.2	28,339.6	29,921.3	30,246.2	30,043.3	30,731.2	31,021.8	30,410.5	29,696.4
Renewable energy sources (RES)	9,427.3	9,399.2	9,622.1	9,404.6	10,027.1	10,350.7	10,638.8	10,635.9	11,151.4	12,355.1
Natural gas	1,978.0	3,422.2	3,388.0	3,488.1	5,514.5	6,586.9	7,019.7	4,038.2	3,392.1	3,513.7
Hard coal	5,165.6	5,719.9	4,453.0	3,454.5	2,149.0	1,914.2	2,761.7	2,425.9	1,918.6	1,355.9
Pumped storage	1,276.0	1,201.5	1,170.5	1,050.6	1,166.7	1,293.1	1,211.4	989.7	1,064.4	921.8
Other gases	3,088.8	3,036.2	2,879.7	2,751.5	2,514.7	2,035.1	1,027.0	941.0	815.7	637.9
Other solid fuels (excluding BDMW)	75.9	78.3	87.8	76.8	82.0	89.7	97.2	98.1	117.8	150.3
Waste heat	32.4	46.0	45.6	64.3	62.1	70.3	70.5	66.3	61.4	57.1
Fuel oils	47.1	44.3	53.9	34.8	38.4	23.5	20.6	23.0	25.0	19.1
Other liquid fuels	16.1	25.0	22.8	21.6	17.4	21.8	12.2	12.0	14.5	12.6
Other	0.7	0.8	0.2	0.5	1.0	1.0	1.5	144.0	171.6	2.8
Coke	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total RES [GWh]	**9,427.3**	**9,399.2**	**9,622.1**	**9,404.6**	**10,027.1**	**10,350.7**	**10,638.8**	**10,635.9**	**11,151.4**	**12,355.1**
Biomass	2,090.9	2,067.4	2,211.4	2,118.7	2,398.7	2,498.9	2,664.6	2,659.4	2,438.5	2,662.6
Biogas	2,614.5	2,600.6	2,639.0	2,607.2	2,527.1	2,594.7	2,592.1	2,615.1	2,601.0	2,564.9
Hydro	1,795.4	2,001.5	1,869.5	1,627.5	2,008.7	2,150.9	2,417.8	2,101.2	2,364.7	2,662.8
Photovoltaic	2,267.3	2,134.2	2,196.9	2,341.6	2,287.8	2,287.7	2,235.5	2,489.1	2,895.3	3,592.7
Wind	572.6	497.0	591.0	609.3	700.0	699.1	601.6	641.4	701.6	716.8
BDMW	86.6	98.6	114.2	100.2	104.8	119.4	127.3	129.7	150.2	155.3
Share of RES [*)]	**11.2%**	**11.3%**	**11.1%**	**10.7%**	**11.5%**	**12.7%**	**12.5%**	**12.6%**	**14.5%**	**16.7%**

[*)] Gross RES electricity generation's simple percentage of total gross electricity generation

(7) Czechia's gross electricity generation from 2015 to 2024 (see Table 2) also shows a transition from coal towards a more diversified mix. Lignite, formerly the dominant source, has dropped significantly, from 35.9 TWh in 2015 to 27.9 TWh in 2024, while hard coal declined even more steeply. Nuclear generation has remained stable over the period, at around 29–30 TWh, consistently providing the country's largest single share of electricity. Renewable generation has steadily expanded, rising from 9.4 TWh in 2015 to 12.35 TWh in 2024, increasing its share of total generation from 11.1% to 16.7%. This growth is driven mainly by biomass, biogas and, especially, solar, which more than doubled over the period. Gas-fired generation varies from year to year but trends upward overall, reflecting a gradual shift toward more flexible, lower-carbon capacity. In sum, the decade is marked by declining coal use, stable nuclear output, and steady renewable growth, with solar emerging as the most dynamic renewable contributor.

Figure 1

Electricity production and consumption in Czechia from 2019 to 2024 (Source: Czech authorities)

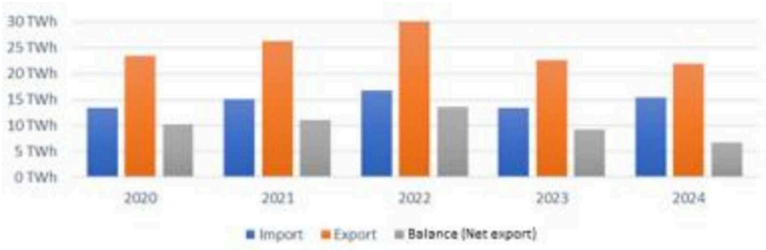


([3]) Yearly Report on the operation of the Czech electricity grid for 2024, published on 27 June 2025 and updated on 1 August 2025 (available at: https://eru.gov.cz/en/node/12418).

(8) Data for 2019 to 2024 (see Figure 1) shows a declining trend in both electricity generation and consumption in Czechia. The drop in gross and net generation from over 80 TWh in 2019 to the mid-70 TWh range by 2024 aligns with the gradual phase-down of coal capacity, rising carbon prices under the EU ETS, and an increasing share of renewables, reducing the need for conventional baseload generation. At the same time, domestic consumption is also on a downward trend, reflecting improved energy efficiency, electrification plateauing in some sectors, a shift in industrial output, and the economic slowdown during and after the COVID-19 pandemic. The narrowing gap between generation and consumption points to a reduced export surplus and growing reliance on cross-border balancing.

Figure 2

Export and import of electricity in the Czech Republic in 2020–2024 (Source: Czech authorities)



(9) Czechia's electricity trade balance from 2020 to 2024 shows a weakening of its net-export position, with exports peaking in 2022 and then declining, while imports gradually rise, narrowing the surplus each year. Although Czechia has long been a net exporter to Central and Eastern Europe - importing on average one-quarter of the electricity it consumes while exporting roughly one-third of what it produces - the most recent National Adequacy Assessment ("MAF CZ 2023") indicates that this role will shift after 2025. Overall, Czechia is expected to develop into a net importer of electricity after the phasing out of lignite and coal and in view of the increase of demand resulting from electrification.

2.2. Expected capacity gap

(10) The Czech transmission system operator ("TSO") ČEPS, has carried out a resource adequacy and security of supply assessment that provides the basis for evaluating future capacity needs and system reliability. The most recent published assessment is the MAF CZ 2023 ([4]). According to Czechia, the reports support the inclusion of the Project within the Czech electricity system.

(11) MAF CZ 2023 assessed two scenarios: the so-called respondent scenario and the so-called progressive one. Both assume the commissioning of two new units in the Dukovany site in 2036 and 2038. In the respondent scenario, coal sources gradually become unprofitable by 2030, after which coal remains in use only in smaller heating plants and industrial energy facilities. Natural gas or biomass replace coal, while the installed capacity of solar, wind and other RES grow. According to this scenario, the Czech Republic will still export electricity in 2025, but imports will gradually increase thereafter, peaking at 18.2% of consumption, i.e. at around 14 TWh, in 2035, before declining slightly. Resource adequacy is maintained until 2030, however the Loss of Load Expectation ("LOLE") ([5]) reaches 10.3 hours in 2035. Although LOLE falls to 7 hours in 2040 due to the full operation of new nuclear units, it still exceeds the reliability standard of 6.7 hours/year.

([4]) Resource Adequacy Assessment of the Power Grid of the Czech Republic until 2040, available at: https://www.ceps.cz/en/resource-adequacy.

([5]) LOLE is the annual number of hours during which resources are insufficient to meet demand.

(12) The progressive scenario envisages a faster transition away from coal, including a complete coal phase-out by the end of 2030 and the conversion of heating plants and industrial energy facilities to natural gas. It also assumes a higher installed RES capacity – primarily solar and wind – a more extensive electrification of transport and heating, and a growing number of prosumers ([6]). In this scenario, a resource adequacy issue arises after 2035, with LOLE reaching 8.7 hours in 2035 and 13.7 hours in 2040. As in the respondent scenario, the Czech Republic is projected to become a net importer of electricity in 2025. Imports exceed 15 TWh after 2030, and in both 2030 and 2035 their share in total electricity consumption exceeds 20%. In 2040, despite new nuclear units, the imports volumes remain more than double those expected in the respondent scenario.

(13) Czechia concludes that, from 2035 onwards, the projected values of the LOLE and the Expected Energy Not Served ("EENS") ([7]) in both scenarios indicate resource adequacy concerns, as the reliability standard is not expected to be met, even when higher import volumes are considered. Czechia explains that many factors influence projected LOLE and EENS values, but the largest impact comes from the coal phase-out combined with rising electricity consumption and limited availability of imports ([8]).

(14) Under normal climatic conditions, the need for additional resources is projected to peak in 2035 at 1.6 to 1.9 GW. This value is expected to decrease in 2040 due to the commissioning of new nuclear units, especially in the respondent scenario, where electricity consumption grows more slowly, and the required supply margin is smaller.

(15) The Czech authorities explained that the decision to invest in new nuclear capacities was based on the results of the 2019 national adequacy assessment ([9]), which were a key element in identifying the need for new nuclear investments. This conclusion is consistent with the findings of the subsequent resource adequacy assessment of ČEPS. In the view of the Czech authorities, the expected capacity gap underscores the urgent need for additional dispatchable capacity to ensure the safe operation of the Czech electricity system. According to the Czech authorities, with today's technological possibilities, Czechia has no viable alternative to nuclear power. Other sources/measures - renewables, gas power plants, flexibility resources, enhanced interconnections – are expected to complement nuclear capacities, but cannot replace the nuclear generation required to address the projected supply gap (see also Section 2.3). Nuclear power, being dispatchable, low-carbon and characterised by high availability and a high capacity factor, is viewed by Czechia as essential for closing the identified supply gap. Because nuclear development requires long lead times, the Czech authorities are examining alternatives as short-term measures, including further RES development, cogeneration upgrades, and the development of a capacity remuneration mechanism to facilitate the necessary investments in gas-fired generation and flexibility solutions, including battery storage during the transition away from lignite and coal.

(16) The studies presented by the Czech authorities take into account the expected cross-border flows between Czechia and its neighbouring countries. The day-ahead electricity market is based on the implicit allocation of cross-border capacity. In June 2022, the Core ([10]) Flow-Based Market Coupling project ([11]) went live and Czechia

([6]) A prosumer is an entity that is both a producer and a consumer of electricity.

([7]) EENS is the volume of electricity demand which cannot be supplied due to insufficient resources.

([8]) The Czech authorities explained that reliance on electricity imports is not a viable solution, as all surrounding Member States are also projected to face significant adequacy issues. According to the 2024 edition of the European Resource Adequacy Assessment ('ERAA') (Annex 5: Country comments), Germany and Poland show, in 2028, LOLE values well above the reliability standard (18.79 h and 13.17 h respectively), indicating a limited ability to support neighbouring systems. Although Austria and Slovakia report lower LOLE levels (2.5 h and 2.9 h respectively for 2028), these countries have significantly smaller generation fleets and electricity markets compared to Germany and Poland. Their ability to provide significant cross-border support in scarcity periods is therefore inherently limited. These parallel risks reduce the likelihood of available cross-border support during critical periods and highlight the regional nature of the adequacy problem, reinforcing the need for domestic capacity measures in the Czech Republic.

([9]) Available at: https://www.ceps.cz/en/resource-adequacy.

([10]) A capacity calculation region is a geographic area where the tasks of capacity calculation are coordinated by Transmission System Operators. The Core capacity calculation region consists of the bidding zone borders between Austria, Belgium, Croatia, Czechia, France, Germany, Hungary, Ireland and Northern Ireland, Luxemburg, the Netherlands, Poland, Romania, Slovakia and Slovenia. For more information see Article 5 of the ACER Decision on the amendment of the determination of capacity calculation regions: Annex I, available at: https://www.acer.europa.eu/sites/default/files/documents/Individual%20Decisions_annex/ACER_Decision_04-2024_CCR_methodology_amendment_Annex_I.pdf.

([11]) The Core Flow-Based Market Coupling project aims to develop and implement the daily operation of a Flow-Based day-ahead market coupling in the Core Region.

fully integrated its day-ahead market, thereby achieving the target model of the electricity market as defined in Commission Regulation (EU) 2015/1222 of 24 July 2015 on capacity allocation and congestion management ([12]). Czechia also integrated its intraday market in line with the latest developments in the Core region.

(17) Czechia maintains a highly interconnected electricity transmission system with its neighbouring countries ([13]). Czechia's interconnectivity level is already close to 30%, reflecting a high degree of integration with the wider European grid. The Czech Republic has also planned and is implementing a series of measures ([14]) to reinforce and modernise its electricity transmission network. These initiatives, led principally by ČEPS, address key priorities for security of supply, the integration of RES, enhanced cross-border capacity, and resilience to future system needs.

(18) Despite Czechia's strong interconnection with surrounding countries, electricity flows vary considerably over the year. The analysis of the price evolution in both scenarios in MAF CZ 2023 shows that electricity imports can help lower wholesale prices in the Czech Republic during summer. However, during winter, all available resources in Europe are expected to be exhausted in certain hours, leading to electricity shortages, even when expensive demand side response measures are used. Therefore, MAF CZ 2023 concludes that new flexible generation resources are needed to prevent a possible supply shortage during climate-sensitive periods of the year, alongside continued improvements in energy efficiency.

(19) Czechia explains that these conclusions are also supported by the 2024 edition of the European Resource Adequacy Assessment ('ERAA') ([15]), which identifies medium-term adequacy risks for Czechia. According to this assessment, in 2028, the Czech Republic would record one of the highest LOLE values in continental Europe, with LOLE values above the reliability standard in all modelled years.

2.3. **Alternative options for securing a low carbon electricity mix**

(20) The Czech authorities have examined several options for securing a low-carbon energy mix, namely investments in RES, gas power generation, increased imports, demand response, and nuclear power. Extending the operation of gas, lignite, and coal resources was excluded for environmental reasons, as well as regulatory uncertainties and high CO_2 prices.

([12]) OJ L 197, 25.7.2015, p. 24.

([13]) The Czech authorities explained that the interconnection of the Czech and neighbouring electricity systems has been historically very strong and that they expect that the exchange of electricity will increase further due the transformation of the energy sector. The current market interconnection capacities for Czechia are: CZ <> DE: 2800 MW; DE <> CZ: 2600 MW), Austria (CZ <> AT and AT <> CZ: 900 MW), Poland (CZ <> PL and PL<> CZ: 800 MW), and Slovakia (CZ <> SK: 2000 MW; SK <> CZ: 1200 MW (EMBER 2025). To strengthen the energy security with neighbouring countries, several investments to increase existing capacities are planned. Notably, the interconnector modernization between Germany and Czechia is scheduled for 2027-2028 and will result in an increase in the market import capacity of 500 MW in both directions (i.e., CZ00-DE00: 3.300 MW and DE00-CZ00: 3.100 MW). A new interconnector between Czechia and Slovakia (Otrokovice-Ladce) is envisioned after 2035 and the resulting net market capacity increase should be approximately 500 MW in both directions.

([14]) For example, the Chodov – Čechy Střed 400 kV Line is a new 35.1 km, 400 kV overhead line connecting Chodov and Čechy Střed. This project is expected to be commissioned in 2027 and will significantly strengthen north-south flows within the Czech grid.

([15]) See in particular the Country comments in Annex 5, available here: https://eepublicdownloads.blob.core.windows.net/public-cdn-container/clean-documents/sdc-documents/ERAA/2024/report/ERAA_2024_Annex_5%20Country_Comments.pdf.

(21) According to Czechia's National Energy and Climate Plan ([16]) (NECP), the share of RES in gross final consumption is expected to increase to 30% by 2030 ([17]). The NECP also envisages an installed capacity of 10.1 GW of photovoltaic and 1.5 GW of wind power plants ([18]). Czechia is arguing that given the increasing use of intermittent renewables and the specific climate constraints on RES production in the Czech Republic, deficits in electricity and heat supply are expected to increase significantly at times of high demand. Czechia will therefore require energy resources that are permanently available throughout the year, can be stored for both long and short durations, and are cost-competitive. Czechia considers that nuclear resources have lower requirements for support services and network investments compared to intermittent RES. In the context of emission reductions, they may also reduce the need for large-scale gas supply for ancillary services in a system with a high share of intermittent sources ([19]).

(22) As regards demand response, in June 2025, the government approved the National Action Plan for Flexibility Development ([20]). This action plan envisages ensuring sufficient storage capacity to meet market needs and develops financing options. The action plan proposes steps to further develop demand side response, in particular the timely implementation of relevant EU legislation. Current estimates for battery development in Czechia in 2030 are of around 3-3,5 GW and in 2040 around 5 GW.

(23) According to the estimations provided by Czechia, gas-fired generation is expected to reach 15% of gross electricity production by 2030 and 3% by 2040 ([21]). The Czech authorities stress that Czechia is fully dependent on natural gas imports, with limited diversification options due to gas network constraints. Gas-fired generation offers limited added value in terms of self-sufficiency and cannot fully replace the capacity lost through the coal phase-out. By contrast, nuclear fuel imported from abroad can be stored several years ahead. Thus, although not an indigenous source, nuclear power is considered a better option than natural gas in terms of energy security and import dependency ([22]).

(24) The Czech Republic aims to maintain import and export capacities of the transmission system for 2030 of no less than 30% and 35% of maximum load, respectively, corresponding to a 15% target of installed capacity under the Czech NECP ([23]). However, coal-fired power plants and the existing Dukovany nuclear reactors, scheduled for shut down, currently account for approximately 55 % of domestic electricity consumption. According to grid modelling, it is technically possible to import approximately 20 TWh - around 25-30 % of Czechia's net electricity consumption - which would not be sufficient to replace the capacity lost due to the decommissioning. In addition, the coal phase out in neighbouring countries is likely to further limit the availability of imports (see also recital (13) and footnote 8).

(25) In light of the above, Czechia has examined the development of strategic nuclear capacity. It argues that due to geographical specificities and difficulty of developing large-scale renewable projects in Czechia, nuclear capacity has emerged as a preferred option for the Czech authorities. Its long lifespan, low CO_2 emissions, high utilisation factor, high fuel density, and stable, reliable, and predictable operation are regarded as major advantages. The development of nuclear energy has been identified as a strategic objective, complementing Czechia's other goals related to energy security and sustainability, such as increasing the share of RES and phasing out of coal power plants.

([16]) https://commission.europa.eu/document/download/3164cc75-45db-4898-bc63-d5f7d989c9c9_en?filename=CZ%20%E2%80%93%20FINAL%20UPDATED%20NECP%202021-2030%20%28English%29.pdf.
([17]) NECP, table 5, p.23.
([18]) NECP, p.4-5.
([19]) NECP, p. 91.
([20]) Resolution No. 431/2025 of 11 June 2025, by which the Government approved the Action Plan, can be found here: https://odok.gov.cz/portal/zvlady/usneseni/2025/431/. The Action Plan and information on its background is available at: https://mpo.gov.cz/cz/energetika/elektroenergetika/elektroenergetika/narodni-akcni-plan-rozvoje-flexibility--288010/.
([21]) NECP, Table 9, p. 26.
([22]) NECP, p. 128.
([23]) NECP, p.4.

2.4. **Alternative options to support nuclear energy**

(26) Czechia explained that the Low-carbon Act ("LCA") ([24]), adopted on 1 October 2021, establishes the national framework for the construction and post-2030 operation of nuclear power plants above 100 MW, including the present Project.

(27) Prior to adopting this framework, the Czech authorities assessed several potential support mechanisms for nuclear investment, ranging from tax credits and capacity mechanisms to direct subsidies, low-interest loans, regulated investment price models, Contracts for Difference (CfDs), and power purchase agreements (PPAs).

(28) The authorities concluded that tax reliefs were unsuitable due to their significant budgetary impact and their inability to provide long-term investment certainty in volatile market conditions. Capacity mechanisms were also deemed inappropriate, as they remunerate availability rather than stable low-carbon generation. Direct investment aid and public loans were viewed as strong incentives capable of reducing financing costs, particularly in light of past investment cancellations due to insufficient revenue certainty. A regulated asset base ("RAB") model was also considered, as it would reduce investment risk by allowing cost recovery throughout the asset's life. However, the authorities noted that selling electricity directly on the market under this model could reinforce the position of the incumbent operator and raise competition concerns unless specific safeguards were introduced.

(29) The Czech authorities also examined the option of a long-term power purchase agreement ("PPA") between the State and the investor, under which a State-owned entity would buy the nuclear power plant's ("NPP") output at a predetermined price and resell it on the market. Such a mechanism would have provided revenue stability, facilitated the provisioning of decommissioning costs, and reduced investor risk, with financing potentially covered by the State budget or partly passed on to consumers. While a PPA could, in principle, mitigate market impacts and enable excess profits to be channelled back to the State, this option was ultimately discarded as, in light of the requirements in art. 19d(2) of the Electricity Regulation ([25]), direct price support for new investments must be granted through two-way Contracts for Difference.

2.5. **Objectives and background**

(30) Czechia submits that the addition of two new nuclear units is essential to advance decarbonization goals, address the expected capacity gap and ensure security of supply, as well as to diversify energy sources, and preserve industrial competitiveness.

(31) Czechia stresses the need to replace both coal-fired plants and, over the longer term, aging nuclear facilities. The four existing Dukovany units are expected to shut down between 2045–2047, and the two Temelín units between 2060–2062, while coal plants that currently supply almost half of domestic electricity are being phased out. In the latest NECP, Czechia reaffirmed its commitment to decarbonise its electricity system and phase out the use of coal for energy and heat generation by 2033. Czechia explains that, without new measures, domestic and regional assessments project a future shortfall in generation capacity. The notified measure therefore aims to enable the construction of two new nuclear units, Dukovany 5 and Dukovany 6, providing around 2 GW of capacity required to replace retiring assets, meet rising electricity demand, and ensure long-term security of supply and system reliability.

([24]) The Act No. 367/2021 on Measures for the Transition of the Czech Republic to a Low-carbon Energy and Amendment of Act No. 165/2012 Coll., on Supported Energy Sources, as amended entered into force on 1/1/2022. The Act was lastly amended in 2023 and is available at: https://www.e-sbirka.cz/sb/2021/367?zalozka=text. The Czech authorities explain that the Low-Carbon Act was preceded by an extensive consultation process in 2020 and 2021, showing wide support from the general public (63-65 % long-term) as well as wide political support.

([25]) Regulation (EU) 2024/1747 of the European Parliament and of the Council of 13 June 2024 amending Regulations (EU) 2019/942 and (EU) 2019/943 as regards improving the Union's electricity market design (OJ L, 2024/1747, 26.6.2024, ELI: http://data.europa.eu/eli/reg/2024/1747/oj).

(32) Czechia explains that the Project aligns with its National Energy Policy ([26]), the National Energy and Climate Plan, and the National Action Plan for the Development of Nuclear Energy ([27]), all of which emphasise the continued role of nuclear power in achieving climate neutrality by 2050. Both nuclear and renewable energy expansion are considered necessary to replace fossil fuels, diversify the energy mix, support industrial competitiveness, and create jobs.

(33) Czechia notes that the Project forms part of a broader programme to expand low-carbon generation, necessary to replace approximately 10 GW of coal-fired capacity that currently produces almost half of Czechia's electricity and is planned for decommissioning. This wider programme is expected to include additional nuclear capacity beyond the present Project. Together, the project and the broader programme will contribute to achieving a carbon-neutral economy by 2050 through the development of low-carbon electricity generation in Czechia.

(34) Czechia submits that the Project contributes to Czechia's commitments under the Paris Agreement, the European Green Deal, and REPowerEU, by reducing emissions and lowering dependence on imported fossil fuels exposed to price and geopolitical risks.

(35) According to Czechia, its National Energy Policy explicitly provides for the continued use and development of nuclear power as a core component of its generation mix, a choice which is protected under Article 194(2) TFEU, which guarantees the sovereign right of each Member State to determine its own energy mix and the structure of its energy supply.

(36) The LCA establishes the legal framework for developing and financing low-carbon electricity generation in Czechia, with a particular focus on new nuclear power capacity. It sets out the state's role in supporting strategic low-carbon projects, including mechanisms for providing financial assistance, ensuring long-term price stability, and mitigating investment risks that private investors cannot manage alone. The Act also defines what qualifies as low-carbon electricity - explicitly including nuclear power - and outlines procedures for approving, constructing, and operating such projects. Overall, it provides the regulatory foundation needed to enable large-scale low-carbon investments essential for Czechia's long-term energy security and decarbonisation objectives.

(37) According to Czechia, a set of structural market failures prevents the development of new nuclear capacity without state intervention. Czechia argues that nuclear projects face exceptionally high upfront capital requirements - amounting to several billion euro - and are vulnerable to cost overruns and delays, particularly for first-of-a-kind Generation III units in OECD countries. In Czechia's view, the very long operational lifetime of nuclear plants (around 60 years) creates exposure to prolonged market uncertainty that private investors and commercial lenders cannot accommodate. Czechia also notes that nuclear energy remains subject to political and societal sensitivities, increasing the perceived risk of future policy changes over the lifespan of the investment.

(38) Czechia further considers that recent economic and energy market developments have intensified these risks. Inflation, higher interest rates, supply-chain disruptions, and geopolitical instability following Russia's invasion of Ukraine have raised financing costs and undermined investment certainty. At the same time, Czechia highlights that increasing price volatility, driven by the expansion of zero-marginal-cost renewables and variable gas prices, makes future market revenues unpredictable. In Czechia's assessment, this volatility hampers investors' ability to secure long-term hedging arrangements at prices sufficient to ensure a viable return. Additionally, international experience of cost escalation and delays in new nuclear projects is viewed as having weakened investor confidence, further increasing perceived project risks.

([26]) The National Energy Policy is a strategic document reflecting the objectives and the State's priorities in the field of energy management, with a horizon of 25 years. The National Energy Policy currently in force was approved by the Czech Government on 16 May 2015 with a horizon until 2040. More information can be found here: https://mpo.gov.cz/en/energy/state-energy-policy/.

([27]) National Action Plan for the Development of the Nuclear Energy Sector in the Czech Republic, Date: 22 May 2015, https://www.mpo.cz/assets/en/energy/electricity/nuclear-energy/2017/10/NationalAction-Plan-for-the-Development-of-the-Nuclear-_2015_.pdf.

(39) Czechia concludes that these combined factors are likely to result in market revenues insufficient to ensure the economic viability of Dukovany 5 and 6 new units, creating a funding gap that the private sector cannot bridge. For these reasons, Czechia maintains that State aid is necessary to address the identified market failures and unmanageable investor risks, and to enable the construction of new nuclear capacity essential for meeting its decarbonisation and energy security objectives.

3. DESCRIPTION OF THE PROJECT

3.1. General description of the Project

(40) The notified measures cover the construction and operation of two new nuclear units, i.e. units 5 and 6 at the Dukovany site, in Czechia, with a capacity of up to 976 MWe each.

(41) Dukovany units 5 and 6 are planned to use KHNP's APR-1000, a Generation III+ pressurised water reactor adapted to meet European nuclear safety regulations. The Project will provide up to 15,4 TWh of electricity per year.

(42) Czechia explained that the new reactors will be able to operate in load-following mode, meeting the tender's minimum requirements (see section 3.3) and carrying a contractual performance guarantee. They will comply with the European Utility Requirements for LWR Nuclear Power Plants ([28]) and will have the ability to run continuously anywhere between the minimum regulated level and full rated power. The minimum regulated level will be set out in the connection agreements by the TSO. Czechia further explains that, while the reactors will be technically capable of frequent loan changes, such operation will bring uncertainties and potential downsides such as greater material stress, added operational complexity, reduced fuel efficiency, and increased maintenance.

(43) Construction works are expected to start in 2029 and the new-built nuclear reactors are expected to be commissioned as from 2036 (Dukovany 5) and as from 2037 (Dukovany 6) and have a lifetime of 60 years.

(44) Korea Hydro & Nuclear Power, as the Engineering, Procurement and Construction (EPC) supplier, will be responsible for the engineering, construction and commissioning of the Project. Additional suppliers, providing goods and services outside the EPC scope, and contracting directly with the beneficiary, will also contribute, supporting the Project both during pre-construction development and through to the operational phase.

(45) The Czech authorities also explained that the Project will meet the technical screening criteria in connection with radioactive waste management set out in point 4.27 of the delegated act adopted pursuant to the Taxonomy Regulation ([29]).

(46) In particular, the National Policy for the Management of Radioactive Waste and Spent Nuclear Fuel (the "National Policy") has been updated in view of complying with the technical screening criteria set out in points 4.26, 4.27 and 4.28 of the above-mentioned delegated act. The updated draft was submitted to the Government in April 2025 and the Government took note of it by its Resolution No. 249/2025 ([30]). Czechia explains that a key component of the updated National Policy is a detailed technical and implementation plan for commissioning a deep geological repository for high-level radioactive waste by 2050. This plan outlines the timeline, responsibilities, and major milestones for site selection, licensing, construction, and commissioning of the facility.

([28]) Please see https://europeanutilityrequirements.eu/.

([29]) See Commission Delegated Regulation (EU) 2022/1214 of 9 March 2022 amending Delegated Regulation (EU) 2021/2139 as regards economic activities in certain energy sectors and Delegated Regulation (EU) 2021/2178 as regards specific public disclosures for those economic activities, C/2022/631 final.

([30]) Available at: https://www.odok.gov.cz/portal/services/download/attachment/2025/249/pdf/. By this resolution, the Government took note of the evaluation of the implementation of the current National Policy and of its draft update and ordered the Minister of Industry and Trade to carry out a screening procedure and, where appropriate, an environmental impact assessment, as well as to submit the final version of the draft on the basis of the conclusions of the screening procedure.

(47) The updated National Policy is expected to undergo a screening procedure in 2026, following which it will be determined whether a Strategic Environmental Assessment (SEA) ([31]) will be required (the competent authority being the Ministry of the Environment). Once these procedures are completed, the Government will formally approve the updated Policy. Subsequently, in accordance with Article 13.1 of Council Directive 2011/70/Euratom, the Policy will be notified to the European Commission.

(48) Czechia further explained that, concerning the use of accident-tolerant fuel, during the negotiation of the contract for the supply of nuclear fuel for the first ten years of operation of the plant, all accident-tolerant fuel features and technologies currently available from the selected supplier were considered. The fuel will be delivered in the horizon of 2035 and fuel development, and licensing will be performed in the years before delivery.

(49) In addition, the Czech authorities explain that, in compliance with the Taxonomy Regulation, they intend to ensure that there will be resources available at the end of the estimated useful life of the nuclear power plant corresponding to the estimated cost of radioactive waste management and decommissioning. In particular, the Czech Republic has established an effective legal and institutional framework to ensure availability of resources for decommissioning, waste and spent fuel management. This framework has been for many years used for the existing units at Dukovany NPP and Temelín NPP. The framework has been subject to repeated evaluation and auditing from many international organisations and institutions. Decommissioning and nuclear waste treatment costs in have also been included in the financial model of the Project (see section 3.4.2).

3.2. **Current state of development and planning of the Project**

(50) The Czech authorities have explained that the life-cycle of the Project is divided in five stages:

— Stages 1: Preparation and supplier selection

— Stage 2: Preliminary works

— Stage 3: Construction

— Stage 4: Warranty period

— Stage 5: Operations post-warranty and decommissioning

(51) In view of the need for new nuclear capacity, ČEZ approved an initial business plan in 2010 for adding up to 1 200 MW capacity to the Dukovany site by 2036. A feasibility study for the expansion of the current nuclear capabilities at the Dukovany site was completed in the same year. In view of the approval of State aid for the 5th unit in the Dukovany site, an initial business plan prepared by ČEZ was submitted to the Commission in June 2021 and an updated version was provided on 25 October 2023. A new draft business plan, taking into account the envisaged construction of two new units, was submitted to the Commission on 25 September 2025.

(52) The Czech authorities explained that a First Implementing Contract concluded between Czechia, ČEZ and EDU II regulated stage 1 of the Project, i.e. until selection of the EPC contractor. EDU II is the Project's promoter, responsible for the oversight of the Project and the future owner and operator of the new nuclear units. EDU II is owned by the State (80%) and by the Czech electricity incumbent ČEZ (20%) (for more information see section see section 3.9).

([31]) The Strategic Environmental Assessment covers the whole National Policy, but it is particularly relevant for the potential sites for deep geological repository.

(53) For stages 2 and 3, the contractual setup will include the Contract for Difference an Investor Agreement and a decision of the State to provide the Repayable Financial Assistance ('RFA'), i.e. the loan (see section 5.2).

(54) The Czech authorities submitted that most necessary permits and licenses have been obtained for the two units. More precisely, EDU II has obtained the following administrative decisions/permits.

(55) The Project received its binding Environmental Impact Assessment ('EIA') approval in August 2019 ([32]), following a multi-year process which began in 2016 with a notice of intent launching the EIA scoping phase, supported by extensive technical and environmental surveys. The process included national and cross-border public hearings conducted in 2018. Based on this documentation and public input, the Ministry of Environment issued a positive binding EIA statement setting environmental and other conditions and allowing the Project to proceed to further permitting steps.

(56) In March 2020, ČEZ and EDU II submitted an application for a siting license to the State Office for Nuclear Safety ('SÚJB'). In March 2021, SÚJB completed the review and issued the sitting license for two new nuclear units at the Dukovany site, which is regulatory approval of the location of the nuclear facility, confirming that the proposed site is suitable and safe for a nuclear power plant, a precondition for later licenses, in particular for construction.

(57) In April 2021, in line with the Energy Act, the Ministry of Industry and Trade assessed whether the contemplated Project complies with the State Energy Policy and issued an authorisation for two new nuclear units at the Dukovany site.

(58) In February 2025, the Ministry of Industry and Trade issued a final zoning decision for the construction of new nuclear units at the Dukovany site and their connection to transport infrastructure.

(59) EDU II has reached an agreement with the Czech Transmission System Operator, ČEPS on how the new Dukovany units would be connected to the national grid. A formal contract for future grid connection has been signed, setting target dates for the first synchronization (i.e. when each reactor begins supplying electricity) for Unit 5 in December 2036 and Unit 6 in December 2037.

(60) The next steps, i.e. license for the construction of a nuclear installation and building permit, are expected to be concluded in June 2028 and March 2029 respectively, while the construction works will start separately for each unit, by April 2030 for Dukovany 5 and April 2031 for Dukovany 6.

3.3. **The procurement process**

(61) Czechia explains that it implemented the process for the selection of the engineering, procurement and construction contract for the new nuclear power plant at the Dukovany site, without direct application of public procurement rules, on the basis of the security exclusion under Article 24(2) of Directive 2014/25/EU ([33]) ('Utilities Directive').

Definition of essential security interests entailed by the nuclear project

(62) Czechia submits that the Project and the tender for the selection of the EPC contractor concerns its genuine essential security interests.

([32]) https://portal.cenia.cz/eiasea/detail/EIA_MZP469?lang=en.

([33]) Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 29.3.2014, p. 243).

(63) Czechia explains that its Security Information Service regularly highlights risks associated with major projects in the energy sector, particularly concerning foreign entities ([34]) whose policy goals conflict with Czech interests.

(64) Czechia explains that the risks associated with nuclear projects fall under geopolitical security according to a 2019 study by the European Centre of Excellence for Countering Hybrid Threats ([35]). Nuclear projects can potentially be exploited for intelligence activities or geopolitical leverage. Hybrid threats are evolving, posing risks to the energy security of nations, necessitating stringent security measures. As a landlocked country dependent on energy imports, especially with planned coal phase-out in line with decarbonization goals, ensuring the security of energy supplies is crucial for the Czech Republic's national security and energy independence.

(65) Given these concerns, the Czech Republic prioritises, in nuclear energy projects, an ongoing review of national security interests throughout the supplier selection process, rather than merely excluding certain suppliers at the outset based on security grounds.

(66) Czechia explains that it established comprehensive procedures to address and manage the security risks associated with nuclear power plant construction. The Standing Committee on the Construction of New Nuclear Sources ([36]) adopted these procedures, which respond to identified associated risks and the need to define the national security interests in the context of nuclear newbuild projects.

(67) The Standing Working Group ([37]) on matters relating to the security interests of the Czech Republic in the field of nuclear energy was also established to continually evaluate these security interests, ensuring that national security remains safeguarded during all phases of nuclear plant development, from preparation and construction to operation. The Standing Working Group identified various security risks and threats to national security interests, including geopolitical shifts and potential project delays, energy supply insufficiencies, cyber threats, and interventions by countries of origin that could affect project viability. Transparency issues were also identified as a significant concern. Based on these findings, the Czech Ministry of Industry and Trade developed specific security requirements, adopted as classified information by Government Resolution 484/V of 2020. These requirements emphasized risks like technological dependency, information misuse, and corrupt practices in the supplier chain during construction and operation phases on new nuclear sources.

Availability of less restrictive measures

(68) Czechia has pointed out that the Utilities Directive and its Public Procurement Act ([38]) are not entirely suitable to the context at hand and therefore do not fully address the specific circumstances relevant to safeguarding essential security interests in this tender processes. According to Czechia, the Directive offers for instance limited scope for implementing restrictive criteria or requirements.

(69) In that regard, Czechia underlines that under the Utilities Directive the selection criteria should be designed to reflect capacity of an economic operator to perform the contract with sufficient economic resources and professional and technical experience. Such criteria shall be objective and must, by their nature, lead to the characteristics that the economic operator has at the beginning of the tender procedure. However, in view of the dynamics of the geopolitical situation and increasingly sophisticated cyberattacks, it is not possible to pre-define selection criteria as regards which economic operators and/or their subcontractors are permitted to participate in

([34]) Notably, Russia and China have been pointed out in this context. In April 2021, information emerged regarding the involvement of Russian military intelligence in the 2014 explosions at an ammunition warehouse in the Czech Republic, which resulted in a diplomatic crisis between the Czech Republic and Russia.

([35]) Available at https://www.hybridcoe.fi/wp-content/uploads/2020/07/Nuclear-Research-Report-2019_web.pdf.

([36]) This is an inter-ministerial advisory and coordination body established by the government of the Czech Republic. For more information please see: https://mpo.gov.cz/cz/energetika/novy-jaderny-zdroj/staly-vybor-pro-vystavbu-novych-jadernych-zdroju/.

([37]) The group forms part of the institutional framework under the broader Standing Committee for the Construction of New Nuclear Resources in the Czech Republic.

([38]) https://portal-vz.cz/legislativa-a-judikatura/narodni-legislativa/zakon-o-zadavani-verejnych-zakazek-a-jeho-provadeci-predpisy/uplne-aktualni-zneni-zakona-o-zadavani-verejnych-zakazek/.

a contract award procedure from the perspective of the protection of essential security interests. The contracting entity must assess the interested economic operators - under the guidance of the Government - individually and throughout the entire tender procedure to protect the essential security interests. Moreover, where access to the tender is restricted to certain economic operators, the applicable rules require transparent justification, the disclosure of which may in itself pose risks to national security.

(70) Confidentiality within the tender process poses another critical concern in Czechia's view. The Utilities Directive mandates unrestricted access to documents early in the tender process, conflicting with the need for gradual information dissemination crucial for safeguarding essential security interests. The Czech Republic argues that in such a highly sensitive procurement context, many of the conventional mechanisms used to safeguard confidentiality are inherently insufficient. Tools such as non-disclosure agreements (NDAs) can only prevent commercial misuse and cannot counter risks linked to state-driven interference or espionage and therefore fail to adequately protect against information misuse.

(71) In summary, Czechia's essential national security interests and the unique sensitivities of nuclear power plant projects necessitate an approach that cannot be accommodated within the constraints of the Utilities Directive. Czechia seeks the ability to control information dissemination and adjust tender procedures as necessary to protect security interests, requiring flexible provisions reflecting national specificities.

(72) The Czech authorities consider that the choice to conduct a competitive tender procedure which incorporates all relevant security requirements is the least restrictive method possible for selecting the EPC contractor. In their view this approach maintains sufficient competitive pressure among the bidders, thereby constituting the least restrictive measure and entailing minimal necessary departures from standard public procurement rules. Therefore, the invoked derogation does not extend beyond what is strictly necessary to protect Czechia's essential security interests.

The procurement process

(73) Czechia submits that ČEZ and EDU II discussed the organisation of the tender to select the EPC contractor outside the Public Procurement Act regime with the national Office for the Protection of Competition and obtained a positive opinion on 15 June 2020 before proceeding with a call for tenders ([39]).

(74) Czechia explained that the selected EPC supplier will be responsible for the engineering, construction and commissioning of the project.

(75) Following the decision to exclude applicants from States that were not party to the Agreement on Government Procurement ([40]), at the time of launching the procurement process there were three possible technology choices: – AP1000 design by Westinghouse Electric Company LLC (USA); – APR1000+ design by Korea Hydro & Nuclear Power ('KHNP') (South Korea); and – EPR 1200 design by EDF (France).

(76) The call for tenders for the selection of the EPC contractor was launched by ČEZ, via its subsidiary EDU II, on 17 March 2022, and initial bids by the three pre-selected suppliers were received in November of the same year. After extending the deadline for the submission of final bids twice, the three pre-selected potential suppliers provided updated bids on 31 October 2023 ([41]). Czechia explained that, under the terms of the tender process, the respective bids were required to include binding offers for the construction of the 5th unit in Dukovany and non-binding offers for 3 additional units, one at the Dukovany site and two at the Temelín site.

([39]) See Office for the Protection of Competition, § 29(1) letter a) of Act No. 134/2016 Coll., on public procurement, 15 June 2020, available at: https://uohs.gov.cz/cs/legislativa/verejne-zakazky.html. On 23 January 2024, the Office for the Protection of Competition confirmed that this applies also under the changes to the tender process introduced to request binding bids for 4 reactors.

([40]) World Trade Organization, Agreement on Government Procurement as amended on 30 March 2012 ('GPA 2012'), https://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm.

([41]) See press announcement from CEZ, available here: https://www.cez.cz/nextcez/en/media/press-releases/cez-groups-dukovany-power-plant-ii-has-received-final-bids-for-the-construction-of-a-new-nuclear-power-plant-in-dukovany-from-three-bidders-183909.

(77) On 31 January 2024, the Czech Government decided ([42]) to modify the scope of the EPC tender by tasking EDU II to request binding offers for up to four nuclear reactors, with the aim to secure the option to proceed with the execution of these additional units at some point in the future, when and if the Czech State decides to do so.

(78) On 6 February 2024, the Czech Government decided to continue the process of the tender with EDF and KHNP only, excluding Westinghouse.

(79) On 30 April 2024, the two tenderers remaining in the selection process submitted supplemented bids including binding options for three additional nuclear units ([43]).

(80) On 14 June 2024, CEZ/EDU II finalised the evaluation and ranking of the bids and recommended KHNP as preferred supplier to the Ministry of Industry and Trade (MIT). ([44])

(81) On 17 July 2024, the Czech Government confirmed KHNP as the preferred supplier/contractor for the construction of two new nuclear reactors at the Dukovany site ([45]).

(82) On 7 May 2025, the Czech Government approved the conclusion of a turnkey EPC contract with KHNP for the two units at the Dukovany site.

(83) The EPC contract between EDU II/CEZ and KHPN was signed on 4 June 2025 covering the construction of two new nuclear reactors at the Dukovany site and an option for two further units at the Temelín site. ([46])

(84) The Czech authorities submit that the EPC contract as well as a nuclear fuel and Contract Agreement were signed on 17 June 2025.

3.4. **Revenues and costs of the Project**

3.4.1. *Risk-sharing*

(85) The Czech authorities explain that EDU II faces only limited risk exposure and that the allocation of risks between the investor and the State is structured to support efficient investment and minimise market distortions.

(86) Construction risk is borne entirely by the State, given EDU II's reduced equity contribution to the Project and the absence of obligations to inject additional capital if construction risks materialise. Market price risk is largely removed through the CfD mechanism (see section 5.3), while funding risk also lies mainly with the State as the provider of the RFA (see section 5.2). Performance and volume risks are mitigated through additional protection against adverse impacts (see section 5.4). Risks related to solvency, decommissioning, and waste management are shared between EDU II and the State ([47]). The risk of policy change is largely mitigated as ČEZ, EDU II's private shareholder, benefits from a put option allowing it to sell its share to the State in specific circumstances (see section 5.4).

([42]) See Government Resolution No. 74 dated 31 January 2024, available at: https://odok.gov.cz/portal/services/download/attachment/2024/74/pdf/.

([43]) See press announcement from CEZ, available here: https://www.cez.cz/nextcez/en/media/press-releases/elektrarna-dukovany-ii-of-the-cez-group-received-supplemented-bids-from-bidders-for-the-construction-of-a-new-nuclear-source-in-dukovany-and-binding-options-for-190873.

([44]) See press announcement from CEZ, available here: https://www.cez.cz/nextcez/en/media/press-releases/cez-evaluated-bids-for-the-construction-of-a-new-nuclear-unit-and-named-its-preferred-bidder-with-results-submitted-to-ministry-of-industry-and-trade-192269.

([45]) See the Resolution no. 499 of the Government of the Czech Republic of 17 July 2024: https://mpo.gov.cz/assets/cz/energetika/jaderna-energetika-a-nove-jaderne-zdroje/rozvoj-novych-jadernych-zdroju/2024/7/usneseni_2024_499.pdf and a press announcement from the Czech Ministry of Industry and Trade, available here: https://mpo.gov.cz/en/guidepost/for-the-media/press-releases/the-government-has-decided-on-a-preferred-supplier-for-the-new-nuclear-power-source-at-dukovany--282181/?utm_source=chatgpt.com.

([46]) See a press announcement from the Czech Ministry of Industry and Trade, available here: https://mpo.gov.cz/en/guidepost/for-the-media/press-releases/epc-contract-for-completion-of-dukovany-has-been-signed--minister-of-industry-and-trade--lukas-vlcek-will-visit-korea-again-in-july--287912.

([47]) The Czech authorities explained that the primary financial responsibility remains with EDUII or the radioactive waste generators. The residual risk borne by the State consists in a potential insufficiency of funds available either in the decommissioning reserve account of EDUII or on the nuclear account financed by radioactive waste generators. In such a situation, the State may be required to take exceptional measures to ensure nuclear safety.

(87) Czechia explains that, overall, this risk allocation brings the Project's risk profile close to that of a regulated electricity infrastructure company, such as a network operator. In Czechia's view, the limited exposure to construction, market, and funding risks, combined with the possibility of additional support makes the project markedly different from other nuclear investments or merchant energy projects.

3.4.2. *Revenues and costs of the Project*

(88) Czechia submitted a financial model based on a discounted cash-flow analysis which forecasts future streams of cash flows, including the revenues and costs of the investment, and discounts them to determine the net present value ('NPV') of the Project. The financial model also determines the strike price of the two-way CfD, at a level where the NPV of the Project is zero, which allows the project to reach its target rate of return.

(89) The financial model assumes a 9-years construction phase and a 60-years operational phase. Each reactor unit is expected to be operated for 60 years, but their operational phases will start from 2037 for Unit 5 and 2038 for Unit 6.

(90) The financial model submitted by Czechia uses several assumptions regarding market price, the NPP's availability, construction costs, operating costs and decommissioning costs and other relevant assumptions such as regarding capital expenditure and financing of the Project. EDU II will benefit from a two-way CfD with a duration of 40 years for each reactor (see section 5.3). Throughout the CfD period, the NPP will obtain market revenues by selling its output either on organised markets or through PPA auctions. The CfD will top or claw back these market revenues so that the plant effectively receives the Strike price per MWh of available capacity. After CfD expiry, the power plant will rely solely on market revenues.

(91) In the baseline scenario, the strike price of the CfD is estimated to be [85-105] EUR/MWh (at 2024 prices).

(92) Czechia explained that the financial model uses cost estimates which represent the best expectations for the NPP's costs and operational characteristics at the notification.

(93) The Czech authorities estimate the overnight costs of the Project at €[20-25] billion for both units 5 and 6. These costs cover the EPC contract, the Nuclear Fuel Contract ([48]), and Owner's costs and contingencies ([49]). The EPC contract costs are EUR [15-20] billion overnight for both Unit 5 and Unit 6.

(94) Czechia explained that the capital expenditure ("CAPEX") of the Project, totalling EUR [3.0-5.0] billion in 2024 real terms (EUR [3.0-5.5] billion in nominal terms) in development CAPEX and EUR [15-20] billion in 2024 terms (EUR [20-25] million in nominal terms) in construction CAPEX ([50]) comprises several major cost components. Equipment accounts for the largest share at around 40%, followed by construction and commissioning costs at approximately 30%. Buildings represent about 10% of total CAPEX, while engineering services contribute roughly at the level of 15%. The remaining 5% consists of ancillary items such as staff training, technology transfer, and other project-related activities.

([48]) Czechia sets out that NFC costs had to be included as a part of the overnight costs. During the construction works, when EDU II does not have any other source of financing than RFA, it is necessary to procure the nuclear fuel necessary to perform all (safety) tests and to start operation. Nuclear fuel is inseparable part of nuclear power plant supply, and the costs will be spent during the RFA phase, before the nuclear power plant operates and has an income from the selling of electricity.

([49]) Czechia explained that the EPC contract covers the Engineering, Procurement and Construction phase of the NPP including Project Management and Engineering for the Nuclear Island, Turbine Island and Balance of plant. The Nuclear Fuel Contract covers the purchase of nuclear material, production, delivery and installation of nuclear fuel. The Owner´s costs cover expenses beyond basic construction, including site preparation, licensing and permitting, engineering, etc. Contingency covers risk allowances and cost variations.

([50]) Development CAPEX covers pre-construction costs such as for design, permits, etc. while Construction CAPEX covers the direct costs of physically building tangible structures such as buildings and infrastructure.

(95) The operating expenditure ("OPEX") of the Project, totalling EUR [90-110] billion ([35-45] EUR *per* MWh) is based on cost data for ČEZ's existing nuclear units, adjusted to reflect the specific characteristics of the new units. Fixed operation and maintenance costs represent the largest share, at roughly [35-45]% of OPEX. Lifecycle costs account for around [15–25]%, while fuel costs constitute approximately [15–25]% of total OPEX. Contributions to the nuclear account make up about [5–15]%, and decommissioning expenses represent roughly [1–10]% of total OPEX. Load-following costs and consumable operating materials and equipment each contribute a further [1–10]% and [1–10]%, respectively.

(96) Regarding the marginal costs of the NPP, Czechia sets out that they consist of the consumable operating materials and equipment ([1.2-2.7] EUR/MWh) and the contribution to nuclear account ([51]) ([2.3-5.3] EUR/MWh), provided in the financial model. The marginal costs are assumed to be approximately [3.0-6.5] EUR/MWh. Czechia considers that fuel costs estimated at [5-10] EUR/MWh may not be considered as purely marginal costs. The decommissioning costs have been estimated by [1.0-2.5] EUR/MWh.

(97) The Czech authorities provided a sensitivity analysis for the Project, with 16 different scenarios.

(98) For the commissioning delay sensitivities, the Czech authorities have maintained the total construction CAPEX amount and its allocation over time unchanged and extended the construction period by 1 to 5 years, with additional annual OPEX (based on base case) added for each of these extra years. However, Czechia will provide detailed outcomes of the commissioning delays scenarios at a later stage, including (i) whether additional CAPEX would arise as a result of the extended construction period (e.g. escalation or demobilisation/remobilisation costs), (ii) whether and how the existing CAPEX should be reallocated across the revised timeline, and (iii) whether the annual OPEX should be adjusted rather than replicated for each additional year. Early commissioning scenarios were not modelled at this stage.

(99) For CAPEX sensitivities, total CAPEX has been uniformly increased or decreased by a given percentage. In the case of CAPEX increases, this leads to a higher RFA drawdown and, consequently, a higher strike price to ensure that the Project remains able to service its increased debt.

(100) For the load factor sensitivities, the percentage load factor applied in the financial model has been reduced, resulting in lower revenues over the project life. These scenarios lead to a deficit in the post-CfD period, where the Project is no longer able to fully cover its operating costs. The Czech authorities will provide further details for this scenario.

(101) As for electricity price variations, Czechia argues that they primarily affect revenues during the post-CfD period. Under current assumptions, the Czech authorities explain that the model can absorb lower post-CfD electricity prices, albeit with a corresponding reduction in the Project's Return on Equity (RoE).

3.4.3. *Cost overruns*

(102) The Czech authorities explain that the responsibility for cost overruns during the construction phase is defined primarily in the EPC contract.

(103) In particular, the EPC contractor bears the main responsibility for delivering the Project on time, within budget, and at the required quality, with about […]% of the contract value covered by a fixed price. Certain risks outside KHNP's control - and, according to Czechia, largely outside EDU II's control as well - such as risks linked to licensing processes, changes in policy or regulation, or force majeure - are shared between EDU II and the Czech State as costs arising from these risks are to be financed through the state loan/RFA.

([51]) The "Nuclear Account" is a state-managed fund which collects mandatory financial contributions from all radioactive waste producers to cover future disposal costs.

(104) Regarding potential construction cost overruns, their coverage and incentives, the Czech authorities argue that since the state acquired an 80% share in EDU II in 2025, the Project is effectively state-owned (see recital (144)). The state therefore takes strategic decisions, controls EDU II, and appoints its management and supervisory bodies. They further note that (i) ČEZ a. s., the 20% minority shareholder, is itself 70% state-owned, and (ii) EDU II has no other economic activities. During construction, its sole source of financing is the RFA provided by the State under the Low-Carbon Act. As a result, Czechia maintains that any additional costs must ultimately be borne by the State, either through an increased RFA or via the State's obligations as shareholder.

(105) The State has chosen to cover additional costs by raising the RFA drawdown limit and adjusting the strike price of the contract for difference. In case of cost increases, EDU II will need to formally request an increase in the RFA and justify it in detail. Any increase will require approval from the Czech Government. At the same time, the authorities argue, the state will use its supervisory powers to ensure sound economic management.

3.5. **Expected rate of return**

(106) The Czech authorities set the Project's target RoE at [6-8]% to reflect the distribution of risks between the State and EDU II. The Czech authorities calculated a target RoE range of [5-7]% to [7-9]% and selected a [6-8]% RoE – at the lower end of this range – to minimise the required aid.

(107) The Czech authorities provided a detailed explanation of the methodology used to calculate their target RoE range. Czechia states that this methodology is consistent with the Commission's approach, particularly as applied in the 2024 Decision ([52]).

(108) To estimate the RoE, the Czech authorities used a standard Capital Asset Pricing Model ("CAPM") ([53]), expressed by the formula shown here below ([54]):

$$R_e = RfR + Beta * MRP$$

Where:

(a) RfR is the risk-free rate, i.e., the return expected from investing in riskless assets;

(b) *MRP* is the market risk premium; and

(c) Beta (or levered beta) is a measure of the idiosyncratic, non-diversifiable risk of the Project. The formula is applied to compute a range of potential target RoEs under a low and high scenario as well as tests for sensitivities of different input values.

(109) In their analysis, the Czech authorities estimated the RoE parameters as described below. While Czechia applied methodologies largely consistent with those used in the 2024 Decision, the beta coefficient was calculated using different data to reflect the Project's updated risk profile, as further detailed below.

(110) To calculate the RfR, the Czech authorities used 6- and 12-months averages of the Euro area triple A 30Y Government Bonds and German 30Y Government Bonds ([55]), resulting in a range 2.50–2.53%. The Czech authorities then added a Country Risk Premium ("CRP") of 0.5% sourced from professor Damodaran's database ([56]). The resulting RfR range is [3.00-4.00]%–[3.03-4.03]%.

([52]) Commission Decision of 30 April 2024 on the measure State aid SA.58207 (2021/N) which Czechia is planning to implement to support the construction and operation of a new nuclear power plant at the Dukovany site.

([53]) The CAPM is a financial model that describes a linear relationship between an investment's expected return and its systematic risk. It is used to estimate the required rate of return on an asset, based on the risk-free rate, the asset's beta (which measures its sensitivity to market movements), and the market risk premium.

([54]) The Czech authorities submit that they do not adjust the CAPM model to account for debt beta, which is set to zero.

([55]) See SA.58207 (2021/N), Recital (492), p.100.

([56]) Damodaran (2025), January 2025 global equity risk premium database. Available at: http://pages.stern.nyu.edu/~adamodar/New_Home_Page/datafile/ctryprem.html.

(111) For the Equity Risk Premium ("ERP"), the Czech authorities observed that, in its first Dukovany decision, the Commission determined the ERP using four sources: the Damodaran CDS-based method, the Damodaran rating-based method, and the median and average of Professor Fernandez survey-based approach ([57]). Applying the same methodology, Czechia calculated an overall ERP range of [4.5-5.0]% to [6.0-6.5]%.

(112) To estimate the equity beta, or unlevered beta, Czechia relied on a peer group of four EU transmission system operators, arguing that the new investment model provides EDU II with a comparable level of risk protection and profit limitation ([58]). As noted in recitals (85) to (87), under the revised model, EDU II's construction and development risks are mitigated, as cost overruns or delays can be passed through to the strike price during the CfD or through RFA increases post CfD, similar to how TSOs can recover such costs through tariffs. Moreover, under the CfD, EDU II faces limited volume and market risk, enabling it to achieve the target RoE in a manner akin to regulated entities. On the basis of this TSO peer data and using the same method applied in the Dukovany decision ([59]), Czechia derived an unlevered beta in the range of [0.25-0.35] to [0.30-0.40].

(113) To estimate the levered beta, Czechia re-levered the equity beta using an expected average gearing of the Project of […]%, which is the same gearing used in the Dukovany 5 decision, obtaining a range of [0.70-0.80] to [0.75-0.85].

(114) As for the tax rate, Czechia used 21%, which is Czechia corporate tax rate, and the same rate used in the Dukovany 5 Decision.

(115) Table 3 below summarises the main parameters of Czechia's target RoE, as well as Czechia's RoE range.

Table 3

Czechia target RoE and target RoE range

Approach	Market-based approach	Survey-based approach
Risk Free Rate	[3.00-4.00]%	[3.03-4.03]%
Equity Risk Premium	[4.5-5]%	[6-6.5]%
Beta Unlevered	[0.25-0.35]	[0.30-0.40]
Gearing	[…]%	[…]%
Tax rate	21.0%	21.0%
Beta Levered	[0.70-0.80]	[0.75-0.85]
RoE	**[5-7]%**	**[7-9]%**

Source: the Czech authorities

(116) The Czech authorities also argue that the assessment further provides an expanded target RoE range of [5.5-6.5]%-[7.5-8.5]%, with potential further increases of the upper end, if a higher leverage is assumed.

([57]) See SA.58207 (2021/N), Recital (493), pp. 100-101.

([58]) The selected companies are: Terna spa (Italy), Red Electrica (Spain), Elia (Belgium), and REN (Portugal). The Czech authorities argue that TSOs provide grid access to the electricity market players (i.e., generating companies, traders, suppliers, distributors and directly connected customers), according to non-discriminatory and transparent rules, and are generally operating under significant revenues regulation, as a natural monopoly. They are also subject to high degree of revenue predictability, generating most of their income *via* a toll set or approved by the national regulatory authorities and proportional to the energy they transmit or capacity they provide; see "Report on the methodologies and parameters used to determine the allowed or target revenue of gas transmission system operators", *ACER*, 30 October 2018.

([59]) This method consists in calculating a weighted average of 2-year unlevered betas (assigned 2/3 weighting) and 5-year unlevered betas (assigned 1/3 weighting).

3.6. **Overcompensation control mechanism**

(117) The Czech authorities will establish an overcompensation control mechanism, applicable throughout the Project's lifetime, intended to prevent excessive remuneration in scenarios where market conditions turn out to be more favourable than anticipated. They explain that the mechanism is intended to ensure that EDU II's returns do not exceed an upper limit defined in the Project documentation and financial model. This cap covers potential excess returns arising from both lower-than-expected costs and higher-than-expected revenues, during and after the CfD period.

(118) In addition, Czechia explains that the mechanism is designed to preserve continuous incentives for EDU II to operate the nuclear power plant efficiently within the NPP's technical constraints.

(119) The overcompensation mechanism is based on three key principles:

(120) First, it relies on an ex-post assessment and, where needed, an adjustment of EDU II's profitability to ensure that neither the Project nor its shareholders receive returns above the initially targeted profitability level (as defined by the target equity IRR).

(121) Second, the mechanism is designed to be predictable ex ante. To that end, the trigger, review frequency, and corrective measures in case of overcompensation are all predetermined. The trigger is activated by comparing the Project's actual equity IRR at the assessment date with the applicable target equity IRR Threshold. The actual equity IRR excludes any performance (or expected performance) of the Project beyond the assessment date.

(122) Third, the mechanism incorporates a 'motivation factor' intended to maintain incentives for EDU II to behave in line with market principles and operate the plant so as to maximise market revenues within the NPP's technical limits. In calculating the actual equity IRR, the target equity IRR is increased by [0.5-2.0] percentage point through this motivation factor. The Czech authorities note, however, that certain details of the mechanism are still under discussion.

(123) The proposed implementation currently provides for the following sequence and timing of steps:

(124) Five-year return-on-equity assessments: The review will be carried out at five-year intervals throughout the entire operational lifetime of the NPP. The State may conduct the review more frequently if considered necessary, for example after the expiry of the CfD period. The first assessment will take place at the end of the financial year in which the operating licence is obtained, or, if earlier, at the end of the financial year immediately preceding the fifth anniversary of the start of electricity delivery from the first new unit to the grid.

(125) Use of the latest financial model: Each assessment will rely on the most recent version of the financial model, updated in accordance with the CfD as of the end of the financial year preceding the assessment date, and based on EDU II's audited standalone financial statements for that year.

(126) Payment or adjustment in case of overcompensation: if the actual equity IRR exceeds the target equity IRR (as increased by the motivation factor), EDU II must compensate the State. The State will determine whether the compensation is made via a lump-sum payment or an adjustment to certain parameters of the CfD formula going forward, so as to bring the actual equity IRR back to the target equity IRR threshold (increased by the motivation factor).

3.7. **The national legal basis, transparency, and cumulation**

(127) The national legal basis for this measure is the LCA.

(128) The Czech authorities explained that the aid will also be governed by Act No. 218/2000 Sb., Act on Budgetary Rules and Amendment of Some Relating Acts ([60]) (Budgetary Rules), as amended, as well as the various contracts and agreements with the beneficiary, as described below.

(129) The Master Agreement on cooperation on the construction of a new nuclear sources in the Czech Republic signed between the Ministry, ČEZ and EDU II on 28 July 2020 established a general framework for the initiation and subsequent development of cooperation between the parties on the Project for the construction of new nuclear sources at the Dukovany site. It does not contain any legally binding obligations on the parties. The Project is made conditional in the Master Agreement on prior State aid approval.

(130) The First Implementing Contract between the Ministry of Industry and Trade, ČEZ and EDU II contains legally binding arrangements concerning the rights and obligations of the parties for the first stage of the Project, i.e. until the selection of the EPC contractor. It was signed on 28 July 2020 and subsequently amended on 24 December 2022, 20 December 2023, 30 January 2024, 20 December 2024, 27 February 2025, and 30 April 2025. The First Implementing Contract sets out the conditions for CEZ's equity contribution to EDU II which finances the first stage of the development of the Project.

(131) On 2 October 2025, the Czech authorities provided copies of:

(a) The draft term sheet on the CfD the between the State and EDU II, describing its main parameters. The CfD will replace, when signed, the First Implementing Contract.

(b) The draft term sheet of the Repayable Financial Assistance ('RFA') to be granted by a decision of the Ministry of Industry and Trade.

(132) The Czech authorities also provided the Shareholders' Agreement between the Ministry of Finance and ČEZ which sets out the conditions for the transfer of EDU II's shares from ČEZ to the State. The agreement also sets out the shareholders' rights and obligations in relation to EDU II and establishes restrictions on the transfer of EDU II shares and related pre-emption rights and defines the obligations of the contracting parties in relation to EDU II's governance rules.

(133) The Czech authorities explained that the information on the Project will be published on the Ministry of Industry and Trade website https://www.mpo.cz/cz/energetika/.

(134) The Czech authorities confirmed that the measure cannot be cumulated with other aid received to cover the same costs to be incurred under the Project.

3.8. **Administration of the measure**

(135) Under article 4 of the LCA, the decision to grant the RFA lies with the Ministry of Industry and Trade, as the RFA is provided from the State budget within the Ministry's budget (see recitals (162) and (176)). The funds provided to the beneficiary from the State budget must be received in accounts maintained by the Czech National Bank and subordinated to the State Treasury, in accordance with applicable budgetary rules. Repayments of the RFA principal constitute revenue of the State budget, under the Ministry's budgetary chapter.

(136) With respect to the CfD, OTE - the Czech electricity and gas market operator - will handle the administrative processing of payments to or from EDU II, as explained in further detail in recital (183).

(137) For the 'Additional Support' mechanism, as further described in recitals (229)-(231), the granting authority differs depending on the period in which compensation is provided: during the CfD operational period, the Ministry of Industry and Trade will act as a granting authority, whereas, during the post-CfD period, the Ministry of Finance will assume this role.

([60]) The Act is available here: https://www.e-sbirka.cz/sb/2000/218?zalozka=text.

3.9. **The beneficiary**

(138) The direct beneficiary of the measure is EDU II, an entity specifically created to build and operate the new nuclear generation units at Dukovany. The Czech Republic currently holds an 80% majority stake in EDU II, while ČEZ, holds the remaining 20%. Established in 2015 as a ČEZ subsidiary, EDU II functions as a special-purpose entity. Under the shareholders' agreement, ČEZ's 20% stake may be transferred to the State through a State call option or a ČEZ put option.

(139) ČEZ is the sole nuclear plant operator in Czechia. It is a publicly listed company on the Prague and Warsaw stock exchanges and the parent company of the ČEZ Group, which operates in several European countries (including Czechia, Germany, Poland, Slovakia, France, Italy, the Netherlands and Austria). The Group is primarily active in electricity generation, trading, distribution, and the sale of electricity and heat. It is also involved, to a lesser extent, in commodity trading, gas distribution and supply, mining, and energy services. The Czech Republic owns 69.78% of ČEZ, and the Ministry of Finance exercises the associated shareholder rights.

(140) EDU II is the Project promoter, responsible for strategic control and oversight of the Project, and will be the owner and operator of the new nuclear units. It will also be responsible for dispatch decisions. EDU II will carry out all management functions under effective control and oversight by the State. The Project will be supervised by two boards and an executive leadership team with experience in both nuclear and conventional power plants.

(141) According to the Czech authorities, the current Project model and the choice of EDU II as Project promoter result from a detailed Government assessment. However, this selection was not preceded by a tender, competitive procedure, or public call for expressions of interest.

(142) Czechia explains that, initially, ČEZ was selected as the Project's promoter (as 100% owner of EDU II) for the construction of Dukovany 5 unit due to its extensive experience as a credible and capable nuclear developer and operator in Czechia, and its familiarity with the relevant legislative and regulatory framework, including licensing procedures. As one of Europe's ten largest energy companies, the ČEZ Group also has expertise in nuclear research, project planning, construction and maintenance of energy facilities, and the processing of energy by-products. Its highly qualified staff, experienced in nuclear energy, public procurement, and negotiations, was considered an asset for the Project.

(143) The Czech authorities also noted that the availability of suitable sites for nuclear construction and the economic rationality of such development were important considerations. They described the preparatory work undertaken by ČEZ to date.

(144) Czechia explains that, further to the extension of the Project's scope from one to two nuclear reactors, the Czech Government acquired an 80% stake in EDU II from ČEZ, to ensure direct control, oversight and financing. This purchase was made to prevent ČEZ from becoming over-leveraged, which would have adversely affected its credit rating, hindering its access to adequate financing for its operations. According to Czechia, the 2025 purchase of EDU II shares by the State was based on Article 14 of the First Implementing Contract which regulated the initial stages of the Project (see recital (52)) and its conditions were set out in a Shareholder Agreement signed between ČEZ and the Czech State, represented by the Ministry of Finance.

(145) The Czech authorities explain that, under that contract between the Czech State and ČEZ, the share acquisition obligation could be triggered if certain procedural steps were not completed by specific deadlines - particularly the signing and entry into force of key agreements essential for the Project's economic viability, such as the Second Implementing Contract, the Power Purchase Agreement, or the Contract for Difference. As a result, Czechia maintains, based on the provisions of that contract, it was required to purchase the EDU II shares at a price corresponding to ČEZ's nominal investment in EDU II (without any profit margin).

(146) The Czech authorities state that, as of November 2025, ČEZ has invested CZK 4.5 billion in the development of the new nuclear power plant at the Dukovany site. On the basis of these invested funds, the Czech Republic and ČEZ agreed that ČEZ would sell an 80% stake in EDU II to the State for CZK 3.6 billion.

(147) Czechia considers that the State's purchase of an 80% stake in EDU II at the agreed transaction value does not – taken alone – provide an advantage to ČEZ as it was executed at cost, without allowing for any profit margin.

(148) The Czech authorities further explain that, as originally envisaged in the contract, the transaction should have resulted in the sale of 100% of EDU II shares at the price per share agreed under the contract. While the price per share was respected, the parties agreed to reduce the proportion sold to 80%, with ČEZ retaining a 20% stake. Czechia explains that this retention was necessary to ensure ČEZ's continued involvement in the two-unit NPP Project and to secure the technical expertise essential for its success. The sale therefore followed the revised 80/20 ownership structure.

(149) Czechia considers that under the revised ownership structure, with ČEZ as a minority shareholder in EDU II, the benefits of cost and time efficiency remain, even though ČEZ is no longer the direct beneficiary. These efficiencies can only be achieved by selecting EDU II as the beneficiary. Choosing another operator would involve at least EUR [200-700] million in additional costs and significantly delay the Project. Directly appointing EDU II therefore enables Czechia to address its capacity needs more quickly and at a lower cost than would be possible through a competitive process. Moreover, the Czech authorities emphasised that only a limited number of sites in Czechia are suitable for large nuclear units.

(150) The Czech authorities explained that EDU II is a separate legal entity with its own management and board. It will operate independently, both financially and operationally, and will be subject to regulatory oversight. According to Czechia, the company's statutes establish governance arrangements ensuring its independence from ČEZ. Members of both the Board of Directors and the Supervisory Board are legally required to act solely in EDU II's interests, not in the interests of its shareholders. Under the shareholders' agreement, ČEZ may nominate only a minority of board members, while the Ministry of Finance appoints the majority.

4. MARKET STRUCTURE AND IMPACT OF THE PROJECT

(151) Regarding the wholesale electricity market, the Czech authorities explain that electricity may be consumed by producers, supplied to end-users, or traded. Trading occurs either through bilateral contracts or on organized markets. The day-ahead and intraday markets are operated by OTE a.s. Electricity generated domestically is also traded on platforms run by other entities, such as the Power Exchange Central Europe a.s., as well as comparable foreign exchanges.

(152) As for net electricity production, the ČEZ Group accounts for 71.5% of the market. The Sev.en EC Group represents 12.1%, EP Energy Group 2.1%, Sokolovská uhelná (the legal successor) 1.5%, and the Veolia Group 1.2%. All other producers together hold 11.6%. According to the Herfindahl-Hirschman Index (HHI), the generation market is highly concentrated (HHI above 1800).

(153) The Czech electricity generation market is similarly characterised by high market concentration. In 2024, the ČEZ Group controlled 45.56% of dispatchable generation capacity, including net imports and 71.14% of total generation capacity. Czechia explains that ČEZ's market share is projected to decline as thermal plants (especially coal and lignite capacity) are phased out and that the generation capacity incentivised by the aid package under discussion (the Project) will not significantly affect ČEZ's power on the Czech electricity market. Specifically, ČEZ's market share of dispatchable generation capacity is expected to drop to 26.25% in 2040 and to 12.67% in 2050, while the increase due to the Project will be of less than 5%. Similarly, ČEZ's market share of total generation capacity is expected to drop to 41.48% in 2040 and 26.9% in 2050, while the increase in ČEZ's market shares will be of less than 8%

(154) The Czech authorities maintain that the measure will not reinforce the market position of ČEZ or EDU II, given the revised ownership structure. Since the Czech State now holds 80% of EDU II, the entity should be regarded as a new market participant. EDU II's market share in Czechia will remain limited, as it will operate only the new nuclear units, and even smaller at the regional level. Furthermore, with EDU II as the beneficiary of the aid and ČEZ retaining only a 20% stake, the authorities argue that ČEZ's market position will neither be strengthened nor preserved, in light of EDU II's governance arrangements (see recital (150)) and trading strategy (see section 5.3.4).

5. DETAILED DESCRIPTION OF THE MEASURE

5.1. The aid package

(155) Czechia argues that, in line with industry practice, the combination of high upfront costs, long payback horizon, and exposure to electricity price volatility makes public support indispensable to this Project.

(156) The aid package will include the following three measures:

(a) 'Measure 1': State loan (the RFA), at a preferential rate. The current initial amount of RFA is estimated around EUR [23-30] billion ([61])(see section 5.2).

(b) 'Measure 2': A two-way CfD, ensuring stable revenues for the NPP for a period of 40 years (see section 5.3).

(c) 'Measure 3': Protection for policy changes and additional protection against adverse impacts to address the risk arising with the longevity of exposure to policy changes (see section 5.4).

(157) To finance the Project, the Czech Republic will rely on a mix of equity brought by the beneficiary and external financing ([62]).

(158) In stage 1, the Project was funded by an equity contribution by ČEZ of 4.5 billion CZK. From this amount, EDU II paid for works related to the preparation of the new NPP. The Czech authorities recall that this contribution has already been made, and the equity has been retained by EDU II. ČEZ's responsibilities during the project's initial stage were defined in the First Implementing Contract, mandating the creation of conditions for constructing new nuclear units. Specifically, ČEZ was required to carry out several activities outlined in the contract, such as implementing procedures to select the EPC contractor, securing the site permit for the nuclear facility, obtaining planning approval, acquiring property rights, and performing other necessary actions to complete the project's first phase. Additionally, the contract stipulated that if the project does not proceed to the second stage, the State would reimburse ČEZ for the costs incurred in relation to the project.

(159) No additional equity will be provided to EDU II in the future, neither by ČEZ nor by the Czech Republic.

(160) The future financing of EDU II is expected to be loan-based. From Stage 2 (i.e. preliminary works, construction, and if necessary, post commissioning) onwards, the Project will be financed by commercial debt until the RFA is available in 2027, after the Commission approval of state aid notification has been obtained.

([61]) This was set based on the project budget prepared by the project company EDU II for the purpose of approval of the financing Program for the new nuclear source in Dukovany by the government on 30 April 2025. The RFA is provided under the Low Carbon Act (367/2021 Coll.).

([62]) The Czech authorities recall that stage 1 of the Project was financed by equity provided by EDU II, which at that time was 100% shareholder. Following the approval of the financing program by the government, the Ministry of Industry and Trade ('MIT') issued the Decision on RFA containing a stand-still clause that includes that the financing *via* RFA can start when the Commission approves the notified State Aid measures, including RFA, by its decision. In the meantime, the activities of EDU II are financed by a bridging commercial loan.

5.2. **Measure 1: The subsidised State loan (RFA)**

5.2.1. *General principles*

(161) As a first measure, the Czech Republic intends to provide a state loan at a preferential rate, i.e. at the costs of State debt financing plus 1%, but not less than 2% per year, with no interest accruing during construction.

(162) The drawdown of the loan is planned to be begin in 2026 or after, with a repayment period of 30 years and will be sourced from the State budget and repaid from the NPP's revenues from selling electricity and from the CfD settlements.

(163) Czechia explained that the loan will cover the full construction costs as currently estimated, as well as all potential cost overruns during the construction phase, regardless of who is responsible for such cost increases.

(164) However, Czechia will apply to the RFA a maximum ceiling of EUR [30.0-37.5] billion in nominal terms for the worst-case scenario of construction cost overruns, which is approximately 53% higher than the estimated overnight costs of the Project of EUR [20-25] billion.

(165) Czechia argues that the RFA amount will cover all necessary costs related to the Project and there will be no need for other sources of financing during construction. The amount contained in the RFA was set based on the predicted cost escalation and it includes relevant contingencies for the assessed risks which are probable to materialise during construction.

(166) Although the precise amount of the RFA was not provided by the Czech authorities ([63]), they provided an estimation of the total amount of RFA. The amount consists for Project costs during Phase 2 and Phase 3 and additional contingency amount (the 'Project Reserve'), to potentially cover Project cost overruns above expected costs.

(167) Czechia argues that, as the RFA amount is a key parameter of the MIT decision to provide RFA to the Project, it cannot be increased without the government approval.

(168) Czechia explained that the State, as 80% owner of the project company, will exercise its control over EDU II to ensure efficient performance and management of the Project. Consequently, the government will only approve increases in the RFA amount to the extent they are necessary and proportionate for an efficient realisation of the Project and continued operation of the plant.

5.2.2. *RFA parameters*

(169) The RFA parameters were described by the Czech authorities as follow.

(170) The RFA will be used to finance all future phases of the Project, *i.e.* Phase 2 (the second development stage/ preliminary works), Phase 3 (the construction stage), Phase 3 (commissioning stage) and Phase 4 (trial operation stage). The amount will be set in nominal prices and therefore it includes the expected escalation of costs due to inflation.

(171) The interest will be:

(a) Until granting of the licence to operate the nuclear installation: zero interest.

(b) After granting of the licence to operate the nuclear installation: costs of State debt financing plus 1% but not less than 2% *per* year.

([63]) According to the Czech authorities, the Financing Program as well as documents related to the preparation of the decision on provision of RFA were processed and issued at a level "restricted" in accordance with Act No. 12/2005 Coll. Act on the Protection of Classified Information and Security Clearance. Therefore, the exact amount of RFA, which is a basic information contained in those restricted documents, cannot be provided.

(172) The amortisation will be on a sculpted basis ([64]) over 30 years ([65]). The amortisation will start in partial extent with granting of the licence to operate the nuclear installation for the first unit. The amortisation in full extent starts with granting of the licence to operate the nuclear installation for the second unit.

(173) Before first principal payments and interest debt service, a reserve solely for RFA amortisation and payment of interest (the "Debt Service Reserve" ([66])) will be created and kept by EDU II during the amortization period and used solely for RFA repayment and payment of interest in case of cash shortfall.

(174) If not used during the amortisation period, the Debt Service Reserve shall be used up for the last instalments and interest payments.

(175) If EDU-II notifies the State that the Project requires the suspension of RFA amortisation in order to prevent the Financial Default ([67]) and that EDU II has used up the Debt Service Reserve ("Suspension Notice"), RFA amortisation and payment of interest may be suspended for such period as required to prevent the Financial Default.

(176) The RFA will be available to be drawn from the date on which Decision of the Ministry of Industry and Trade granting RFA to EDUI I enters into effect ([68]).

(177) The commercial loans taken to finance stage 1 of the Project will be refinanced via the RFA. This will take place immediately after the RFA enters into force. Drawdown will occur on a periodic basis, e.g., quarterly in line with EDU II's updated budget and construction timeline.

(178) The amount of the RFA consists for will cover the Project's costs during Stage 2 (development stage/preliminary works) and Stage 3 (construction) as well as additional contingency amount required to cover the Project's cost overruns.

(179) Czechia explains that the amount of the RFA will be limited to the minimum necessary and that voluntary prepayment and/or refinancing will be permitted.

(180) The Czech authorities explained that EDU II will be entitled to distribute dividends from the start of the CfD in accordance with agreed parameters, subject to prior payment of scheduled RFA instalments.

5.3. **Measure 2: The Contract for Difference ('CfD')**

(181) The Czech authorities intend to provide direct price support in the form of a two-way CfD to reduce market risk and secure the revenues necessary for the NPP to service the debt financing necessary for the Project and achieve a target return on equity.

([64]) Sculpted amortisation (or debt sculpting) is a financial technique used to tailor a loan's repayment schedule to align precisely with the project's anticipated cash flow. This method ensures that debt service obligations match the project's ability to generate revenue at different times.

([65]) Although the Czech authorities note that the precise amortization profile has to be agreed in line with forecast Project cashflows, and that regular drawdown can be also used.

([66]) Czechia sets out that the Debt Service Account will be created from free cash flow from commercial operation revenues starting from the granting of the licence to operate the NPP. This reserve will be used to repay the RFA and related interest especially in the event that EDU II is unable to generate revenues (for example, due to a major failure), but it may be used in extraordinary circumstances also for ensuring financial stability of EDU II incl. for OPEX.

([67]) The Financial Default represents the failure to meet the legal obligations of a loan.

([68]) The Czech authorities set out that the Decision was issued on 6 May 2025 with stand-still clause requiring State Aid approval by the Commission.

(182) The CfD will last from the Start Date ([69]) for each unit for a period of 40 years. The terms of the CfD indicate that the 'Start date' would be the date when EDU II notifies the State that it wishes the 'Start Date' to occur. The Start Date will be subject to a Longstop date ([70]) to ensure that the start of the CfD cannot be delayed beyond a reasonable time.

(183) The financing of the CfD settlement will rely on: a) CfD payments from the operator EDU II to the State, , b) revenues of the transmission system operator from the transmission service price component applied to electricity produced by low-carbon generators c) revenues of the distribution system operator from the corresponding distribution service price component for electricity production from low-carbon generators, and d) contributions from the state budget. If, in any given calendar year, the funds described under points (a) to (c) are insufficient to cover the compensation due to EDU II, the market operator will be entitled to receive reimbursement of the remaining amount from the State budget.

(184) The Czech authorities explained that OTE ([71]), the Czech electricity and gas operator, will be the entity responsible for administratively processing CfD payments to the NPP operator. Czechia argues that although OTE is not a CfD counterparty in the legal sense and has no interest in what prices are achieved on organised markets, it is legally required by the State through market operator to make the compensation payment ([72]). The Czech authorities consider that OTE's role is purely administrative and neutral and has no incentive to influence market prices.

(185) The fees charged by OTE for administering CfD settlements will be fixed and independent of settlement volumes or prices. These fees will be supervised by the Energy Regulation Office ("ERO"), as is the case for OTE's other activities.

(186) The terms of the CfD will be agreed between the state and EDU II.

(187) According to the Czech authorities, the CfD will be capability-based, meaning that it will remunerate the operator for its capability to generate electricity rather than for electricity production.

5.3.1. *The NPP's remuneration under the CfD*

(188) Czechia explained that the revenues of the NPP over the duration of the direct price support mechanism will be the sum of settlements with the CfD counterparty and the NPP's market revenues.

(189) Over the lifetime of the power plant, EDU II will sell electricity on the market and obtain corresponding market revenues.

([69]) The Start Date will be determined by agreement between EDUII and the counterparty following the satisfaction of certain conditions including evidence of compliance with the metering obligations, confirmation of first synchronisation with the transmission system, confirmation from the directors that there is no obstacle to the reactor commercial operations.

([70]) See art. 6 of Term Sheet of the two-way CfD.

([71]) 'OTE' is a State-owned joint stock company responsible for organising the short-term electricity and gas markets in cooperation with the TSO. OTE is a Nominated Electricity Market Operator ("NEMO") as defined in Regulation (EU) 2015/1222.

([72]) Notably, in accordance with §3a, paragraph 8 of Act No. 367/2021 Coll., on measures for the transition of the Czech Republic to low-carbon energy, which states that "the compensation payment is made by the Ministry". The Act further states: "The Ministry and the market operator are jointly and severally liable to the authorized investor of the low-carbon production facility. The Ministry is obliged to pay the compensation to the authorized investor of the low-carbon production facility, no later than within the period specified in the contract on the compensation scheme. The Ministry is entitled to fulfil its obligation to pay the compensation through the market operator".

(190) The CfD settlement (R_{CfD}) will be calculated over the settlement period as the sum of CfD revenues calculated per Market Time Unit ([73]) ('MTU') within the settlement period. The CfD revenues are calculated as the difference between the strike price and the reference price multiplied by the reference quantity of the CfD, as defined below.

$$R_{CfD} = (f - p') * k_{CfD}$$

Where:

(f) is the strike price

(p') is the reference price

(k_{CfD}) is the reference quantity of the CfD defined ex ante as the assumed output volume of the plant over the reference period

(191) If the CfD settlement is positive , OTE will pay the CfD settlement to the beneficiary. If the CfD amount is negative for the settlement period, the beneficiary will pay the CfD settlement to the CfD counterparty.

(192) Czechia explained that the reference quantity of the CfD *(k_{CfD})* will be based on the technical characteristics of the plant including its reference capacity and load factor/reference output. The reference quantity will be determined as the expected output of the two units, which depends on the maintenance schedule and eventual technical changes, *e.g.* due for instance to increase in output, and can be adjusted during the periodic review of the parameters in the CfD formula or when an adjustment of the strike price of the CfD takes place.

(193) Depending on market circumstances and the NPP's operational costs, certain adjustments will be made to the formula that calculates the CfD settlement, as follows:

$$If\ p' > c,\ \ R_{CfD} = \max[(f - p') * k_{CfD}\ ; (a * c\ -\ p') * q]$$

$$If\ p' < c, \qquad R_{CfD} = (f - c) * k_{CfD}$$

Where:

(a) Alpha is defined as the quotient of Strike price and Operational Cost *a=f/c*. Alpha is set at the time when the ex-post settlement payable to EDU II is calculated based on the applicable values of *(c)* and *(f)*.

(c) is the Operational Variable Cost of the power plant.

(q) is the output volume of the power plant over the reference period. *(k_{CfD})* is the reference quantity of the CfD defined ex ante as the assumed output volume of the plant over the reference period.

(194) The reference price of the CfD (in the formula, *p'*) will be set as a volume-weighted average price of electricity on the markets and of products corresponding to the EDU II's sales of electricity. It will be calculated based on data from the Czech Power Exchange, Power Exchange Central Europe ("PXE") and OTE and will be determined *per* MTU, reflecting actual market conditions. For forward contracts, the reference price will be tied to settlement prices of relevant products, while for the spot market, it will reflect all 15 minutes prices. Therefore, the reference price should reflect a mix of different products from day-ahead positions covering 15 minutes to forward positions with delivery windows of up to one year or more. Czechia further explained that, since the NPPs could also enter PPAs with specific conditions (see section 5.3.4), the reference price calculation may also include the PPA prices and volumes.

([73]) The market time unit is the standard time interval for trading and setting prices in energy markets.

(195) The reference price will thus be calculated as a volume-weighted average of market indices, envisioned to correspond to the EDU II's share of electricity sold for delivery in that MTU, according to the following formula.

$$p' = a * P_Y + b * P_Q + c * P_M + d * P_W + e * P_{DA} + f * P_{IDA} + g * P_{ID}$$

Where:

a,b,c,d,e,f,g	represent the respective share of each type of products sold by the EDU II in a given delivery day (open interest, in %)
(P_Y)	represents the volume-weighted average price of all yearly contracts for a given year concluded on the market in the last few years preceding delivery day
(P_Q)	represents the volume-weighted average price of all quarterly contracts for a given quarter concluded on the market in the last few quarters preceding delivery day
(P_M)	represents the volume-weighted average price of all monthly contracts for a given month concluded on the market in the last few months preceding delivery day
(P_W)	represents the volume-weighted average price of all weekly contracts for a given week concluded on the market in the last few weeks preceding delivery day
(P_{DA})	represents the single OTE day-ahead volume-weighted average auction price
(P_{IDA})	represents the single OTE intraday auctions volume-weighted average auction price (incl. IDA1, IDA2 etc.)
(P_{ID})	represents the continuous intraday volume-weighted average price

(196) Finally, in case the NPP does not sell its output, the reference price is set by default as the day-ahead price for the specific market-time unit, representing the most liquid, principal market in Czechia.

(197) Czechia explained that P_Y , P_Q, P_M, P_W must be greater than variable cost of the power plant. Furthermore, the strike price would be updated after the RFA tenor to mitigate overcompensation risk.

(198) The Czech authorities propose introducing a CfD formula review clause which allows the parties of the CfD contract, with the agreement of the Energy Regulatory Office, to review and - if mutually agreed - update the definitions and values of the specific parameters used in the CfD formula. Such reviews would take place before the nuclear power plant is commissioned and every five years thereafter.

(199) According to Czechia, the purpose of this review is not to change the fundamental design of the CfD but to ensure that the formula remains technically robust and reflects prevailing market conditions throughout the contract period. To illustrate the scope of this clause, the Czech authorities provided examples of permissible updates, including:

(a) Adjusting the methodology for calculating the reference price to reflect changes in the structure or liquidity of relevant electricity markets.

(b) Modifying the load factor assumption if long-term operational conditions diverge from initial expectations.

(c) Revising the structure of ancillary service revenues ('RTSO') if regulatory definitions are updated ([74]).

(200) The Czech authorities explain that any such changes would require the agreement of both parties and of the Energy Regulatory Office and would be made solely to maintain the CfD's economic equilibrium and technical functionality.

([74]) Czechia sets out that the financial model used to determine the strike price may assume ancillary service revenues if they are expected to be incurred. In case these revenues change (i.e. due to updates of regulatory definitions), the ancillary service revenues would be revisited accordingly.

(201) Czechia also recalls that, under State aid rules, any revision that would materially alter the design or economic impact of the CfD - such as a redefinition of the compensation base, *i.e.* of the costs and other parameters established in the financial model that are used to calculate the strike price, or the introduction of new payment components — would be subject to the Commission's prior approval.

5.3.2. *Setting and reviewing the strike price*

(202) The initial strike price will be calculated on the basis of the financial model at a level which allows the beneficiary of the CfD to achieve the target equity IRR and will be determined based on the overall project economics reflecting the entire operational lifetime of the plant, including planned investment and operational expenditures during the construction and operation phases of the plant.

(203) The strike price will be set initially prior to the signing of the CfD.

(204) To prevent overcompensation in the later CfD years resulting from an unchanged strike price after the end of the RFA tenor, the Czech authorities put forward that a revision (reduction) of the strike price after the RFA repayment period ('RFA tenor') is envisioned ([75]).

(205) Similarly, the Czech authorities set out that the additional support mechanism (see section 5.4) may imply a revision of the strike price to mitigate an adverse effect.

(206) As put forward by Czechia, trading costs will be borne by EDU II. As trading costs may vary over time (due to changes in fees, changes in complexity, changes in volume, etc.), but the amount of compensation through the CfD is fixed *ex ante* as part of the strike price, the Czech authorities are proposing to proportionally index the strike price on the development of trading costs.

(207) Overall, according to the Czech authorities, the envisaged updates are not intended to alter the core economic terms or parameters of the CfD. Czechia acknowledges that any update to model inputs that could affect the calculation of CfD payments or State aid intensity may require the prior agreement of the Commission, unless clearly defined circumstances and criteria for such updates are established in the State aid decision. In that context, considering that the full parameters and updates are not defined yet, Czechia commits to provide a complete list of potential updates at a later stage.

5.3.3. *Indexation mechanism*

(208) To protect against inflation, the Czech authorities plan to introduce an annual indexation mechanism for the CfD strike price, allowing it to be escalated on an annual basis. The base date for the indexation will be the date on which the CfD is signed. Where relevant, the indexation applied under the CfD will mirror the escalation indices used in the EPC Contract and the Nuclear Fuel Contract. Any indexation applied under the CfD, as well as any subsequent modifications will require prior approval by the State.

(209) The indexation formula may be reviewed as part of the CfD Formula Review, carried out every five years or prior to commissioning. According to the Czech authorities, most cost items and other inputs to the financial model are expected to be subject to inflation. Consequently, the Strike price, which will be indexed annually on an ex-ante basis.

([75]) This is explained by the Czech authorities by the fact that, during the repayment period of the RFA (30 years), project cashflows will be partially used to service the RFA, which will affect the level of net revenues available for equity distributions. Once the RFA has been fully repaid, the Project's recurring costs decrease significantly and cashflows available to equity increase.

(210) Two distinct baskets of indices will be used to reflect differences in structure between the construction and operations costs/phases:

(a) Construction basket: CZ PPI (30–50 %), CZ CPI (0–10 %), EU PPI (30–50 %), CZ wages (10–30 %).

(b) Operations basket: CZ PPI (30–50 %), CZ CPI (10–30 %), EU PPI (0–10 %), CZ wages (30–50 %).

(211) The strike price will be adjusted according to the relevant basket: the construction basket during the construction period and the operations basket once the plant enters into operation.

(212) The Czech authorities foresee the possibility of adjusting the indexation mechanism in response to changing macroeconomic assumptions. Certain cost items will not be indexed because they are fixed by legislation or the RFA (e.g. RFA interest, decommissioning costs, nuclear account fulfilment, and minimum case reserves). The weighing of each index reflects the estimated cost distribution and may be refined at financial close based on the verified project costs. All indices will be sourced from the most recent publications of the Czech Statistical Office (CZSO) and Eurostat, with a one-year lag to ensure availability and auditability.

(213) For each Contract Year t, the applicable Strike price (SP_t) shall be calculated as follows:

$$SP_t = SP_{t-1} \times \left[w_{CZPPI} \times \frac{CZPPI_{t-1}}{CZPPI_{t-2}} + w_{CZCPI} \times \frac{CZCPI_{t-1}}{CZCPI_{t-2}} + w_{EUPPI} \times \frac{EUPPI_{t-1}}{EUPPI_{t-2}} + w_{WAGE} \times \frac{WAGE_{t-1}}{WAGE_{t-2}} \right]$$

Where:

SP_{t-1}	is the Strike price applicable in the previous Contract Year.
w =	weight of each index in the relevant basket (construction or operations).
$Index_{t-1}$ / $Index_{t-2}$ =	ratio of the latest available annual index to that of the previous year (one-year lag).

(214) During the five-year overcompensation reviews, the inflation assumptions used for forward projections in the Financial Model will be updated to reflect observed index developments. However, the underlying indexation mechanism and its formula will remain unchanged, preserving regulatory predictability.

5.3.4. *Trading strategy*

(215) The trading strategy of the NPP will be jointly defined by EDU II and the Czech State subject to trading provisions agreed between EDU II and the State. According to the Czech authorities, joint involvement is justified because the State is the counterparty to the CfD and therefore directly exposed to the outcome of the trading strategy. At the same time, to ensure market-conform behaviour and to minimise any risk of undue State influence on the market, the State's role will be limited to the oversight of EDU II's approach. The stated purpose of this oversight is to ensure that the trading strategy supports market efficiency. At this stage, Czechia considers that the MIT - which is not a shareholder of EDU II or ČEZ – could carry this oversight function.

(216) The Czech authorities further note that the trading strategy still requires refinement to incorporate additional measures aimed at reducing the risk of market distortion and ensuring efficient operations. Such refinements may be necessary when the reference price is aligned with captured market prices.

(217) Since the trading strategy has not yet been fully defined, the hedging strategy is also under development. It will be designed as part of EDU II's broader trading and risk mitigation framework. Czechia indicates that EDU II will be expected to follow the standard hedging practices used by power generators, hedging a proportion of expected output through forward products with different maturities. This hedging activity is expected to enhance forward-market liquidity relative to the counterfactual scenario in which the units are not constructed and no associated hedging occurs.

(218) EDU II will bear its trading costs. According to the Czech authorities, these costs will be treated as operating costs.

(219) EDU II may delegate trading activities to third parties. The Czech authorities indicate thus that the trading provisions may include procedures for delegating trading activities (e.g., selecting a third party through a tender) and restrictions on eligible counterparties. To select a subcontractor, EDU II may hold a competitive, transparent, non-discriminatory tender open to all suitable parties. Market behaviour will be monitored and regulated by the regulatory authority and will be subject to applicable regulation (*e.g.*, REMIT ([76])), as it is the case for all other market participants.

(220) The Czech authorities confirm that at least 70% of EDU II's total annual electricity output will be sold on the day-ahead, intraday and futures markets over the entire lifetime of the NPPs. EDU II will sell the rest (i.e. at most 30%) on objective, transparent and non-discriminatory terms by way of auctions. The set of rules and/or framework for these auctions will be reviewed and approved in advance by the Czech energy regulator in line with the regulator's duties and competencies according to the Czech Energy Act. EDU II will be required to notify any auction to the Czech energy regulator no later than one day before its public announcement.

(221) While respecting the conditions described in recital (220), the NPP will be free to sell electricity through any chosen means, including power purchase agreements ("PPAs") with consumers. PPAs will not be offered as physical products, and auctions are foreseen to meet the following conditions: (i) lot sizes of 1–10 MW; (ii) recurring auctions throughout the year; (iii) pay-as-bid clearing with a predefined minimum price; and (iv) contract durations of up to one year. Czechia explains that while tendered products may overlap with exchange-traded products, some features may differ to complement existing exchange offerings. For example, exchange-traded products are typically baseload or peak-load, whereas EDU II may design products aligned with unit maintenance schedules. Czechia states that, at the time of notification, the detailed trading provisions - specifying eligible trading venues and contract types - are still under development and will be agreed between EDU II and the State. These provisions will be supervised by ERO. Czechia emphasises that the pending specifications will need to balance two objectives: avoiding market distortions (in terms of both prices and liquidity) while allowing EDU II sufficient flexibility to optimise its trading strategy. Finally, Czechia also commits that the trading provisions will ensure non-discriminatory trading.

(222) Regarding the risk of capacity withholding - i.e., intentionally reducing output to increase market prices to the benefit of electricity generated by other units owned by the beneficiary - the Czech authorities argue that both the incentives and the ability to engage in such manipulative behaviour are limited for the following reasons:

(223) As a minority shareholder in EDU II, ČEZ no longer has any influence over the NPPs' daily operations under EDU II's governance structure. In addition, the trading strategy will include safeguards to prevent manipulative practices. Consequently, ČEZ will be prevented from engaging in behaviour that could raise prices to the benefit of other plants in its portfolio. Czechia also commits that there will be no market coordination between ČEZ and EDU II with the aim of manipulating prices. ČEZ and EDU II are expected to operate as competing companies.

(224) In Czechia's view, any attempt at capacity withholding would be further constrained by the high level of interconnection with neighbouring markets, which reduces the ability to influence prices through withholding. Under the planned capability-based CfD, withholding capacity would lead to substantial losses in market revenue for EDU II that would not be compensated through CfD payments. These financial losses would also act as a deterrent after the CfD period ends, when EDU II will be fully dependent on market revenues.

([76]) REMIT (Regulation on Wholesale Energy Market Integrity and Transparency) is a EU regulation designed to ensure fair, transparent, and competitive EU energy markets by preventing market abuse, insider trading, and manipulation, requiring participants to report transactions and inside information to ACER (Agency for the Cooperation of Energy Regulators) and National Regulatory Authorities (NRAs); see https://www.acer.europa.eu/remit/about-remit.

(225) EDU II will require revenue from electricity sales to service its debt under the RFA and to pay dividends. Czechia thus argues that EDU II has no economic incentive to reduce output when market prices exceed marginal costs.

5.4. **Measure 3: The protection for policy changes and additional protection against adverse impacts**

(226) The Czech authorities submit that the RFA and CfD, on their own, are insufficient to mitigate the risk associated with the Project's long-term exposure topolicy changes. They therefore propose an additional compensation mechanism, activated in the event of external negative developments ('Adverse Impacts') According to Czechia, this mechanism is intended to address the risk factors regarded as specific to nuclear power plants.

(227) Specifically, Czechia considered that the following non-exhaustive list includes situations that may constitute Adverse Impacts capable of triggering such additional compensation:

(i) legislative or regulatory changes increasing capex, opex or compliance costs;

(ii) significant inflationary shocks not captured through the indexation mechanism;

(iii) unexpected changes in taxation applicable to the Project;

(iv) disruption of expected infrastructure delivery or permitting timelines;

(v) force majeure events such as natural disasters or geopolitical shocks affecting construction or operation;

(vi) substantial deviations in load factors or market conditions resulting in persistent under-recovery of costs despite efficient operation;

(vii) material changes to balancing or dispatch arrangements imposed by the TSO that affect revenue capture; or

(viii) any other verifiable and objective factor that undermines the Project's ability to achieve its target equity IRR.

(228) The aim of such mechanism is therefore to preserve the economic equilibrium of the project and ensure that EDU II remains on track to achieve the target equity IRR.

(229) Czechia explains that this mechanism could lead to compensatory adjustments in the form of changes to the Financial Model assumptions (e.g., CAPEX, OPEX, load factors), adjustments of input elements to the CfD formula in case of cost increases based on such events, increase of the RFA amount or, where necessary, *via* lump-sum payments. Specifically:

(230) During the operational lifetime in the CfD period, in case of external negative impacts and/or unplanned events leading to increased Project costs (such as change of legislation), compensation might be triggered by an increase of the Strike price of the CfD or a lump-sum payment ([77]). In this scenario, the granting authority would be the MIT.

(231) During the post-CfD period of operation, expectedly ca. 20 years, Czechia argues that there may emerge situations where financial stability of the NPP is due to external negative impacts and/or unplanned events leading to increased Project costs, which can lead to financial instability of EDU II in case no private bank loan is available on reasonable terms. For this situation, the conditional ability for Additional Support (i.e. there is no commercial financing available) is foreseen, in the form of a state loan ([78]) to avert economic losses and energy insecurity. In this scenario, the granting authority would be the Ministry of Finance.

([77]) The Czech authorities set out that this would have to be contractually anchored in the CfD.

([78]) The legal basis for the state loan is Act No. 218/2000 Sb., *Act on Budgetary Rules and Amendment of Some Relating Acts (Budgetary Rules)*, as amended.

6. ASSESSMENT OF THE MEASURE

6.1. Existence of aid

(232) According to Article 107(1) TFEU, any aid granted by a Member State or through State resources, in any form whatsoever, that distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods, is incompatible with the internal market, in so far as it affects trade between Member States.

(233) A measure constitutes State aid within the meaning of Article 107(1) TFEU, if it fulfils four cumulative conditions. First, the measure must be imputable to the State and funded through State resources. Second, the measure must confer an advantage to a beneficiary. Third, the measure must favour certain undertakings or economic activities (i.e. there must be a degree of selectivity). Fourth, the measure must have the potential to affect trade between Member States and to distort competition in the internal market.

(234) The Commission notes that Czechia has identified EDU II as the direct beneficiary of aid.

(235) Several separate legal entities may be considered to form one economic unit for the purposes of the application of State aid rules. That economic unit is then considered to be the relevant undertaking ([79]). In this respect, the existence of a controlling share and other functional, economic and organic links are relevant ([80]).

(236) A number of factors must, depending on the case, be examined in order to determine whether separate legal entities may be regarded as forming a single economic unit for the purposes of the application of the rules on State aid, such as the capital, organic, functional and economic links between those entities, and the contracts on the basis of which the aid measure was granted, as well as the type of aid measure granted and the context in which it was granted. It is therefore a global assessment of several factors specific to each individual case. ([81])

(237) The Czech authorities argue that EDU II and ČEZ constitute two separate legal entities, and that EDU II's independence is guaranteed through the legal obligation of the members of the Board of Directors and as of the Supervisory Board to act exclusively in the interest of EDU II, rather than in the interest of the shareholders, as well as through ČEZ's right to nominate only a minority of the members of the Board of Directors and of the Supervisory Board, while the majority of the members is nominated by the Ministry of Finance (recital (150)). In addition, the Czech authorities submitted that as a minority shareholder of EDU II, ČEZ does not have any influence anymore on the daily operations of the NPP. Moreover, boundaries will be defined in the trading strategy to prevent any manipulative behaviour (recital (223)).

(238) However, despite the independence of EDU II and the lack of direct control over it by ČEZ, it cannot be excluded that the two entities form a single economic unit, as they maintain capital and organic links due to the State being the majority shareholder in both of them (recitals (138) and (139)). In addition, the two entities will perform the same economic activity (nuclear electricity generation) at the same site (Dukovany) and are expected to cooperate for the implementation of the Project, as demonstrated by ČEZ being a signatory party in the First Implementing Contract, which contains legally binding arrangements concerning the rights and obligations of the parties for the first Stage of the Project, i.e. until the selection of the EPC contractor (recital (130)) and by the provision of technical expertise by ČEZ (recital (148)). They will thus also maintain functional links. Furthermore, at this stage, it cannot be fully excluded that the electricity trading activity of the new NPP will be coordinated with, i.e. it will not compete with ČEZ, possibly consolidating its market power.

([79]) Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union (OJ C 262, 19.7.2016, p. 1), point 11.

([80]) Judgment of the Court of Justice of 16 December 2010, AceaElectrabel Produzione SpA v Commission, C-480/09 P, ECLI:EU:C:2010:787, paragraphs 47 to 55; Judgment of the Court of Justice of 10 January 2006, Cassa di Risparmio di Firenze SpA and Others, C-222/04, ECLI: EU:C:2006:8, paragraph 112.

([81]) Judgment of the General Court of 20 December 2023, Case T-216/21, *Ryanair DAC and Malta Air ltd. v European Commission*, ECLI:EU:T:2023:822.

6.1.1. *A single intervention comprising several measures*

(239) Different State aid measures can be considered as a 'single intervention'. ([82]) This is the case, in particular, where consecutive interventions are so closely linked to each other, especially having regard to their chronology, their purpose and the circumstances of the undertaking at the time of those interventions, that they are inseparable ([83]). For instance, a series of State interventions which take place in relation to the same undertaking in a relatively short period of time, are linked to each other, or were all planned or foreseeable at the time of the first intervention, may be assessed as one intervention.

(240) In the present case, first, the Commission considers that all three notified measures have the same subject matter and objective, namely, to enable the construction and operation of two new nuclear reactors at Dukovany site. Further, the measures coincide chronologically, as they were planned (and were thus foreseeable when negotiated) together ([84]). Measures 1 and 2 were established by the same legislative act, the LCA (see recital (135), footnote 61). Measure 3 has a separate contractual basis. Nevertheless, Measure 3 is entirely linked to measures 1 and 2 and would not exist in the absence of those measures.

(241) Second, all the measures were negotiated together and are designed in a way that each measure has a direct impact on the others, and the measures jointly create the financial preconditions to enable construction and operation of the plant. It is undisputed that the grantor of the measures 1 to 3 is the Czech State and that they coincide chronologically. For example, lowering the commercial risks through measure 3 (Policy protection and protection against adverse effects) and lowering initial capital requirements through measure 1 (the RFA) impact the amount of aid needed under measure 2 (the CfD). Moreover, the protection for policy changes and additional protection against adverse impacts addresses the risk arising with the longevity of exposure to the market and to political decisions, which the RFA or CfD cannot address alone. The three measures at issue are closely linked and it would have been impossible to separate them.

(242) The Commission further notes that the acquisition by the State of an 80% stake in EDU II and the equity contribution by ČEZ of 4.5 billion CZK to finance the development phase of the project both serve the same purpose as the three above-mentioned measures, i.e. enabling the construction and operation of the plant, and are based on the provisions of the First Implementing Contract (recital (144)). More specifically, under the First Implementing Contract ČEZ was required to perform and finance a number of activities set out in the contract, including the implementation of the procedures for the selection of the EPC contractor, the acquisition of the permit for the sitting of the nuclear facility, obtaining the planning permission for the Project, the acquisition of property rights, and other activities necessary to finalise the first stage of the Project (see recital (158)). The contract further stipulated that if the project does not proceed to the second stage, the State would reimburse ČEZ for the costs incurred in relation to the project. The shares purchase was considered necessary after the expansion of the scope of the Project from one to two new reactors, in order to prevent ČEZ from becoming over-leveraged, which would have adversely affected its credit rating and hindered its access to adequate financing for its operations (recital (144)).

(243) The Commission considers therefore that the three measures, as well as the equity contribution provided by ČEZ to finance the development phase of the Project and the State's acquisition of a controlling stake in EDU II, should be examined together as a single intervention, as they are interdependent and have mutually enhancing effects for the performance of the Project.

([82]) Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union (OJ C 262, 19.7.2016, p. 1), point 81.

([83]) Judgment of 19 March 2013, *Bouygues and Bouygues Télécom v Commission and Others*, Joined Cases C-399/10 P and C-401/10 P, ECLI:EU:C:2013:175, paragraph 104; Judgment of 13 September 2010, *Greece and Others v Commission*, Joined Cases T-415/05, T-416/05 and T-423/05, ECLI:EU:T:2010:386, paragraph 177; Judgment of 15 September 1998, *BP Chemicals v Commission*, T-11/95, ECLI:EU:T:1998:199, paragraphs 170 and 171.

([84]) Judgement of 15 December 2021, *Oltchim SA v Commission*, T-565/19, paragraphs 93 to 197.

(244) The Czech authorities do not dispute the conclusion that the measures, together with the State acquisition of a controlling stake in EDU II and EDU II's equity contribution financing the development phase of the Project are inseparable and constitute a single intervention.

6.1.2. *Imputability to the State and financing through State resources*

(245) For measures to be capable of being categorised as aid within the meaning of Article 107 TFEU, they must be granted directly or indirectly through State resources. It is established case-law ([85]) that measures financed through compulsory charges imposed by the legislation of the Member State, managed and apportioned in accordance with the provisions of that legislation, may be regarded as State resources within the meaning of Article 107(1) TFEU even if they are managed by private or public entities separate from the public authorities. This means that both advantages which are granted directly by the State and those granted by a public or private body designated or established by the State are included in the concept of State resources within the meaning of Article 107(1) TFEU.

(246) Furthermore, it is not necessary to establish, in all cases, that there has been a transfer of State resources in order to assess the measure as State aid within the meaning of Article 107(1) TFEU ([86]).

(247) For advantages to be capable of being categorised as aid within the meaning of Article 107 TFEU, they must be granted directly or indirectly through State resources. This means that both advantages which are granted directly by the State and those granted by a public or private body designated or established by the State are included in the concept of State resources within the meaning of Article 107(1) TFEU.

(248) The combination of measures for this Project has been decided by the State with the adoption of the LCA (see recital (127)) and the conclusion of the Master Agreement, First Implementing Contract and Shareholder Agreement (see recitals (129),(130), and (144)). The granting authority for all measures is the Czech State acting through the Ministry of Industry and Trade and the Ministry of Finance.

(249) All measures that form part of the single intervention are financed from resources under the control of the State. As mentioned in recital (183), Article 9 of the LCA specifies that new nuclear power generation can be financed through one or a combination of: (i) revenues from electricity sales of the nuclear power plant operator, (ii) a price component charged by the transmission and distribution system operators on network users, if so decided, and (iii) contributions from the State budget. The choice of the actual source of financing for the different measures depends on the choice of the Ministry. Article 4 of the LCA specifies that the RFA would be provided from the State budget (see recital (135)) and will be granted by the Ministry of Industry and Trade. The conditions for equity contribution provided by ČEZ to EDU II to finance the Project's development phase are set out in the First Implementing Contract signed between ČEZ and the Ministry of Industry and Trade, against the promise that the costs financed by ČEZ would be covered by the State if the Project does not proceed to its second stage. Finally, the acquisition of 80% of shares in EDU II by the State is financed through the State budget and set out in the Shareholder Agreement.

(250) The Commission therefore considers that the financing of the measures comprised in the single intervention is or will be controlled by the State and that all the measures that form part of the Single intervention are imputable to the State.

([85]) Judgments of 2 July 1974, *Italy v Commission*, 173/73, ECLI:EU:C:1974:71, paragraph 35, and of 19 December 2013, *Association Vent De Colère! and Others*, C-262/12, ECLI:EU:C:2013:851, paragraph 25.

([86]) Judgments of 16 May 2002, *France v Commission*, C-482/99, ECLI:EU:C:2002:294, paragraph 36, of 30 May 2013, *Doux Élevage and Coopérative agricole* UKL-ARREE, C-677/11, ECLI:EU:C:2013:348, paragraph 34, of 28 March 2019, *Germany v Commission*, C 405/16 P, ECLI:EU:C:2019:268, paragraph 55, and of 20 September 2019, *FVE Holýšov I and Others v Commission*, T-217/17, ECLI:EU:T:2019:633, paragraph 105.

(251) In the light of the above, the Commission considers that the measures are granted through State resources and are imputable to the State within the meaning of Article 107(1) TFEU.

(252) The Czech authorities do not contest that the measures will be financed from resources under the control of the State.

6.1.3. *Selective economic advantage*

(253) A measure is deemed selective if it favours only certain undertakings or the production of certain goods. An advantage, within the meaning of Article 107(1) TFEU, is any economic benefit, which an undertaking would not have obtained under normal market conditions, i.e., in the absence of State intervention. ([87])

(254) The specific measures described in sections 5.2 to 5.4, as well as the equity contribution by ČEZ and the State's acquisition of an 80% stake in EDU II, target selectively the Project, namely the construction of two new nuclear reactors at the Dukovany site. They are provided to EDU II and ČEZ as beneficiaries representing two entities that together may form a single economic unit (see recital (238)), thereby favouring that unit as compared to other undertakings in the energy sector.

(255) All the measures that form part of the single intervention, taken as a whole, allow the Project to be realised and provide for a reasonable return of investment (see Section 3.5, especially recital (112)). As argued by the Czech authorities, the measures aim to enable an investment that, due to the specific risks and the long Project duration, would not have been undertaken by a private investor under normal market conditions, that is to say in the absence of State intervention (see recitals (37)-(38)). Hence, the single intervention comprising the measures described in sections 5.2 to 5.4, the equity contribution by ČEZ, and the State's acquisition of an 80% stake in EDU II, confers a selective economic advantage to the beneficiary within the meaning of Article 107(1) TFEU.

(256) As to the measures described in sections 5.2 to 5.4, they would, even if taken separately, clearly confer an economic advantage to the beneficiary. Measure 1 provides an RFA with zero interest during the construction phase of the Project. This represents a clear advantage as such financing, interest-free during the construction phase, at a favourable rate thereafter, and with a long maturity of 30 years is not available from a market operator. Measure 2 provides a stable long-term remuneration for the electricity produced by the NPP that would not, at least not for such a duration, be available on the market, ensuring a steady flow of revenues to EDU II for the 40-year duration of the two-way CfD that other operators not benefitting from similar support measures do not receive. Measure 3 provides protection in case of change of law or policy as well as financial protection in case of adverse effects, thereby reducing investment risk and transferring it to the State and conferring an economic benefit that could not have been obtained under normal market conditions.

(257) The equity contribution by ČEZ to EDU II to finance the development phase of the project also provides an economic advantage as a private investor acting under the market economy operator principle would not agree to finance costly and preparatory works for a nuclear project unless it expects adequate remuneration for the risks taken or if it receives contractual protection against losses. In the case at hand, the adequate remuneration for the risks taken and the protection against losses are provided by the State, which, through the aid package will provide an adequate return on equity to the Project and has also contractually agreed to reimburse ČEZ for the costs incurred in relation to the project, if the Project were not to proceed to the second stage.

(258) Concerning the State's acquisition of an 80% stake in EDU II, made to enable the advancement of the project given its enlarged scope, the Commission notes that Czechia argues that it does not provide an advantage to ČEZ as it was executed at cost (recital (147)). However, since this acquisition forms part of a single State aid intervention together with Measures 1 to 3 (recital (243)) and it cannot be severed from these measures, it is

([87]) Judgment of the Court of Justice of 11 July 1996, SFEI and Others, C-39/94, ECLI:EU:C:1996:285, paragraph 60; Judgment of the Court of Justice of 29 April 1999, Spain v Commission, C-342/96, ECLI:EU:C:1999:210, paragraph.

immaterial for the purposes of this State aid examination whether all the cumulative criteria listed in Article 107(1) TFEU, including the selective advantage, are met separately for the State's acquisition of a majority stake in EDU II ([88]).

6.1.4. *Threat of distortion of competition and trade*

(259) The electricity market has been liberalised and electricity producers are engaged in trade between Member States so that an advantage granted to the producers of nuclear electricity is likely to distort competition and affect trade between Member States. Electricity from nuclear sources is generally sold on the internal market for electricity where it enters in competition with all sources of electricity, including those in other Member States.

(260) Therefore, the advantage granted to the beneficiaries of the single intervention is likely to distort competition and affect trade between Member States. As the measures grant advantages to electricity generation as a competitive activity, that conclusion would, again, be the same if the measures were looked at individually.

6.1.5. *Conclusion on the existence of aid*

(261) On the basis of the above-mentioned elements, the Commission considers that the measures constitute State aid within the meaning of Article 107(1) TFEU, and that this would also be the case for the three measures individually.

6.2. **Compatibility of the measures with Article 107(3)(c) TFEU**

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

(a) Whether the aid measure facilitates the development of an economic activity by:

— identifying the economic activity supported by the aid; and

— showing that the aid effectively facilitates the development of the economic activity,

— without that activity breaching any relevant Union rules.

(b) Whether the aid measure does not unduly affect trading conditions to an extent contrary to the common interest by:

— identifying the market(s) affected by the aid;

— identifying the positive effects of the aid measure on the internal market;

— assessing how the aid measure minimises the distortions on competition and trade by evaluating the necessity of the aid, its appropriateness and its proportionality;

— identifying the outstanding distortions of trading conditions that cannot be avoided (despite the aid being necessary, appropriate, proportionate); and

(c) Weighing up the positive effects of the aid with the negative effects on competition and trade in the internal market.

([88]) Judgment of the Court of Justice of 19 March 2013, *Bouygues and Bouygues Télécom v Commission and Others*, Joined Cases C-399/10 P and C-401/10 P, ECLI:EU:C:2013:175, paragraphs 103-105; Judgment of the General Court of 15 September 1998, *BP Chemicals v Commission*, T-11/95, ECLI:EU:T:1998:199, paragraphs 170 and 171.

6.2.1. *Positive condition: development of an economic activity*

(263) Under Article 107(3)(c) TFEU, the measure must contribute to the development of certain economic activity.

6.2.1.1. Contribution to the development of an economic activity

(264) As mentioned in section 2.5, the objective of the measures subject to this decision is to enable investment in new nuclear power generation and ensure its operation for a prolonged period, thereby contributing to the decarbonisation of the electricity system in Czechia and to the security of electricity supply. Specifically, the support provided by the State targets directly the development, construction, commissioning and operation of the new nuclear capacity consisting in two new nuclear units.

(265) The Court of Justice has recognised the development of new nuclear capacity as an economic activity in the sense of Article 107(3)(c) TFEU ([89]) and has established that Article 107 TFEU may be applied to investments in nuclear power stations ([90]).

(266) The Commission therefore considers that the Project facilitates the development of certain economic activities, namely generation of nuclear-based energy, as required by Article 107(3)(c) TFEU.

6.2.1.2. Incentive effect

(267) State aid can only be considered to facilitate an economic activity if it has an incentive effect. An incentive effect occurs when the aid induces the beneficiary to change its behaviour towards the development of the economic activity pursued by the aid, and if this change in behaviour would not otherwise occur without the aid.

(268) Czechia has explained that, in the absence of aid, an investor would not have the necessary incentives to invest in the development of new nuclear electricity generation capacity. The market is characterised by high volatility, instability of the regulatory environment, and the economics of nuclear resources in the form of high input costs of investment also represent a barrier to entry into the industry. Investment in nuclear energy without State support is unlikely to be profitable due to the uncertainty of developments on the electricity market (recitals (37)-(39)).

(269) The Commission notes that the Project would not go ahead absent State support in view of the current uncertain and fast-changing market conditions and the market failures associated with nuclear power development (i.e., scale of the capital requirement, longevity of exposure to market pricing signals, and longevity of exposure to political decisions).

(270) The Commission further notes that without the aid the funding gap of the Project would not be closed. This is due to the higher financing costs the Project would likely incur in the absence of the RFA and due to the absence of the revenue stability provided by the CfD. Furthermore, without State intervention, the investor would need to bear significant additional risks that are otherwise mitigated by the support measures, such as the market price risk and the policy risk, which suggest that the investor would expect a comparatively higher return to implement the Project without aid.

(271) The Commission therefore considers preliminarily that aid for the Project has an incentive effect as it induces the beneficiary to engage in economic activity it would not carry out without the aid.

([89]) Judgement of 22 September 2022, Austria v Commission, C-594/18 P, ECLI:EU:C:2020:742, paragraph 63.
([90]) Judgement of 22 September 2022, Austria v Commission, C-594/18 P, ECLI:EU:C:2020:742, paragraph 32.

6.2.1.3. Compliance with relevant provisions of EU law

6.2.1.3.1. Introduction

(272) The Court of Justice has consistently held that 'State aid which contravenes provisions or general principles of EU law cannot be declared compatible with the internal market' ([91]). According to settled case law, 'when the Commission applies the State aid procedure, it is required, in accordance with the general scheme of the Treaty, to ensure that provisions governing State aid are applied consistently with specific provisions other than those relating to State aid and, therefore, to assess the compatibility of the aid in question with those specific provisions. However, such an obligation is imposed on the Commission only where the aspects of aid are so inextricably linked to the object of the aid that it is impossible to evaluate them separately. The obligation is not imposed, however, where the conditions or factors of an aid scheme, even though they form part of the aid, may be regarded as not being necessary for the attainment of its object or for its proper functioning' ([92]).

(273) Building on these established principles, the Court of Justice summarised in its judgment in the Paks II case the circumstances in which the Commission must consider other provisions of EU law in its State aid assessment. Specifically, 'the Commission must take into account infringements of provisions of EU law other that those related to State aid where such infringement arises from the economic activity financed, from the aid or from its object as such or from aspects inextricably linked to the object of the aid. Thus, where the modalities of an aid measure are so indissolubly linked to its object that it is impossible to evaluate them separately, their effect on the compatibility or incompatibility of that aid viewed as a whole must therefore of necessity be determined in the framework of the procedure prescribed in Article 108 TFEU. Such modalities are therefore among the factors which the Commission is required to examine and, as the case may be, to approve […]' ([93]).

6.2.1.3.2. Compliance with EU environmental law

(274) As explained in recital (273), State aid that supports an activity that breaches EU environmental rules cannot be found compatible with the internal market. For nuclear energy specifically, the Court of Justice clarified that for the sector 'covered by the Euratom Treaty, State aid for an economic activity falling within that sector that is shown upon examination to contravene rules of EU law on the environment cannot be declared compatible with the internal market pursuant to that provision' ([94]).

(275) The Court of Justice also clarified that the provisions of the TFEU as well as EU environmental law, including the principle of protection of the environment, the precautionary principle, the 'polluter pays' principle and the principle of sustainability cannot be regarded as precluding, in all circumstances, the grant of State aid for the construction or operation of a nuclear power plant ([95]). That reasoning is fully applicable to the Project and the measures at stake, since Czechia has opted for nuclear energy to address future resource adequacy issues and security of supply concerns as well as to decarbonise its energy sector.

(276) Moreover, the Court of Justice highlighted in its ruling that secondary legislation, such as Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment ([96]), under which certain projects are subject to an environmental impact assessment, applies to nuclear power stations and other nuclear reactors ([97]).

([91]) Judgment of 15 April 2008, *Nuova Agricast*, C-390/06, ECLI:EU:C:2008:224, paragraphs 50 and 51.
([92]) See Judgment of 3 December 2014, Castelnou Energía, Case T 57/11, ECLI:EU:T:2014:1021, paragraphs 181-184 with further references. See also Judgement of 30 November 2022, Austria v Commission, T-101/18, ECLI:EU:T:2022:728, paragraph 30 and Judgement of 31 January 2021, C-284/21 P, Commission v. Braesch e.a., ECLI:EU:C:2023:58, paragraph 97. ECLI:EU:T:2022:728, paragraph 30 and Judgement of 31 January 2021, C-284/21 P, Commission v. Braesch e.a., ECLI:EU:C:2023:58, paragraph 97.
([93]) See Judgment of 11 September 2025, Austria v Commission (Paks II), C-59/23 P, ECLI:EU:C:2025:686, paragraph 53 and 54 with further references.
([94]) Judgment of 22 September 2022, Austria v Commission, C-594/18 P, ECLI:EU:C:2020:742, paragraphs 44 and 45.
([95]) Judgement of 22 September 2022, Austria v Commission, C-594/18 P, ECLI:EU:C:2020:742, paragraphs 48 and 49.
([96]) OJ L 26, 28.1.2012, p. 1.
([97]) Judgement of 22 September 2022, Austria v Commission, C-594/18 P, ECLI:EU:C:2020:742, paragraphs 43.

(277) The Commission has no indications that the Project may violate provisions of EU environmental law. The Czech authorities specified that the Project development was preceded by an extensive and open environmental impact assessment process conducted in compliance with EU secondary legislation requirements (see recital (55)).

(278) The Czech authorities committed to notify the Project to the Commission pursuant to Article 41 of the Euratom Treaty ([98]).

6.2.1.3.3. Compliance with public procurement rules

(279) The Commission must take into account possible infringements of provisions of EU law other than those governing State aid where such possible infringements arise from aspects inextricably linked to the object of the aid. In other words, the Commission must examine, within the State aid procedure, 'the indissociable aspects of the object of the aid, that is to say, the modalities which are so indissolubly linked to its object that it is impossible to evaluate them separately' ([99]).

(280) In the Paks II judgment, the Court of Justice held that in this case 'the direct award of the contract for the construction of the two new nuclear reactors is an aspect that is inextricably linked to the object of the aid measure' ([100]).

(281) In light of the Paks II judgment, the Commission examined whether the procedure for the award of the EPC contract constitutes an aspect that is inextricably linked to the object of the aid, such that it cannot be assessed separately from the aid itself.

(282) In the present case, the Commission considers that the object of the aid is to develop two new nuclear reactors at the Dukovany site by providing an aid package supporting their construction and operation, for the benefit of EDU II.

(283) It must therefore be ascertained whether the procedure for the award of the EPC contract could constitute an aspect that is inextricably linked to the object of the aid so that the Commission must include an assessment of whether that aspect complies with EU public procurement rules in its examination of the compatibility of that aid with the internal market, i.e. in the present decision. As clarified by the Court of Justice, an inextricable link exists when 'an aspect consisting in that award is indispensable for the attainment of the objective of the aid' ([101]). 'By contrast, aspects which, although forming part of the aid measure at issue, are not specifically necessary for the attainment of its objective or for its functioning are not aspects that are inextricably linked to the object of the aid.' ([102])

(284) The Commission notes Czechia's position that the procedure for the selection of the EPC contractor is not inextricably linked with the object of the aid measure. That is because the project does not depend on a specific EPC contractor or technology choice, as the chosen site of the project, in Dukovany, could accommodate the technological solutions proposed by any of the three bidders that participated in the competitive selection procedure organised by the investor. Furthermore, the financing of the project, in the form of a subsidised loan (measure 1), a two-way contract for difference (measure 2), and a measure to protect against adverse effects (measure 3) will be provided by the Czech State directly to the investor and does not presuppose a specific supplier or contract award method.

([98]) The notification pursuant to this provision is assessed by the Commission under the requirements of the Euratom Treaty, without prejudice to assessments to be carried out under the Treaty on the Functioning of the European Union and the obligations stemming from it and from secondary legislation. Thus, the assessment under Articles 41-43 of the Euratom Treaty is, inter alia, without prejudice to the application of the EU public procurement rules, the EU competition rules, EU environmental and international rules, and it does not amount to a clearance under the EU State aid rules.

([99]) See Judgment of 11 September 2025, Austria v Commission (Paks II), C-59/23 P, ECLI:EU:C:2025:686, paragraph 70.

([100]) See Judgment of 11 September 2025, Austria v Commission (Paks II), C-59/23 P, ECLI:EU:C:2025:686, paragraph 72.

([101]) See Judgment of 11 September 2025, Austria v Commission (Paks II), C-59/23 P, ECLI:EU:C:2025:686, paragraph 72.

([102]) See Judgment of 11 September 2025, Austria v Commission (Paks II), C-59/23 P, ECLI:EU:C:2025:686, paragraph 71.

(285) At the same time, the construction of the two new reactors represents a factor that is necessary for the attainment of the objective pursued by the notified measure and the project's costs, which are largely determined by the EPC selection procedure, influence the size of the State-subsidised loan that will be used to finance the construction phase of the project.

(286) The Commission therefore considers it prudent, and in the interest of completeness, to assess the compliance of the procedure for the selection of the EPC contractor with EU public procurement legislation, namely Directive 2014/25/EU, which is the relevant Directive regarding the award of contracts for the construction of the new NPP.

(287) As regards public procurement requirements, the Czech authorities consider that Directive 2014/24/EU on public procurement and Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors do not apply to the award of the EPC contract for the Dukovany nuclear power plant, pursuant to the derogations provided for the protection of essential security interests. Considering the sector concerned, Article 24(2) of Directive 2014/25 is particularly relevant.

(288) In this respect the Commission observes that, according to settled case law ([103]), if a Member State seeks to exempt the award of a specific public contract from the EU public procurement rules under Article 24(2) of the Utilities Directive, it must provide evidence of the necessity to protect its essential security interests.

(289) Furthermore, while it is for the Member State to define its essential security interests, the mere invocation of such interests would not automatically exempt, in their entirety, measures adopted by the Member State from the application of the EU law solely because they are enacted for public security purposes. It is the responsibility of Member State, in each individual case, to provide substantiated and specific evidence identifying the essential national security interests concerned, to establish that those interests are subject to a genuine and sufficiently serious threat, and to demonstrate the extent to which compliance with particular obligations under EU law would, in practice, conflict with their protection. The Member State must also demonstrate that the protection of those security interests could not have been attained within a competitive tendering procedure conducted in accordance with the EU Public Procurement Directives or by means of other measures that may be less restrictive of the fundamental freedoms and general principles of EU law. ([104])

(290) The argumentation provided by the Czech authorities emphasises that ensuring the energy security of the Czech Republic - particularly through guaranteeing a sufficient supply of electricity and providing protection against major power outages - is among Czechia's key strategic and security interests, as declared in State strategic documents and it shall be fulfilled both by the investor and the Czech Republic itself, in its capacity as a sovereign entity defining its security priorities, in accordance with the Constitutional Act No. 110/1998 Coll. on the Security of the Czech Republic, as amended, in line with Article 4(2) of the Treaty on European Union. The Czech authorities clarify, however, that energy security is not relied upon as an autonomous ground for derogation but constitutes an inherent element of the broader set of essential security interests identified in relation to the preparation, construction and operation of the nuclear power plant.

(291) In that regard, the Czech authorities describe that, based on information from intelligence services and the Conclusion of the Standing Working Group of the Standing Committee on Nuclear Energy, which confirmed the existence of security risks and real threats to the national security interests linked to the preparation, construction, and operation of the new nuclear power plants at the Dukovany and Temelín sites, these essential security interests were set out in Government Resolution No. 484/V of 27 April 2020, which was adopted under a classified information process.

([103]) Judgement of 20 March 2018, Commission v Austria, Case C-187/16, ECLI:EU:C:2018:194, paragraph 75.
([104]) Judgement of 20 March 2018, Commission v Austria, Case C-187/16, ECLI:EU:C:2018:194, paragraph 78.

(292) This Resolution defined and linked the essential security interests of the Czech Republic to energy security and, more concretely, to the construction of the Dukovany Nuclear Power Plant (NPP). It identified several concrete and evolving security risks, setting up out specific measures to safeguard the essential security interests concerned, assigning specific responsibilities to relevant State authorities, including structured and continuous communication with the investor and the issuance of binding instructions necessary to ensure the effective protection of the State's essential security interests. The publicly communicated risks defined in the Resolution include the abuse of technological dependences, including information technologies, the risk of misuse of information, the risk of abuse of dependence on the supplier and risks linked to the operation of the subcontracting chain during the preparation, construction, and operation of the nuclear power plant, including in relation to the supply of spare parts and nuclear fuel, the risk of deliveries of insufficient or low quality, and the risk of corrupt practices.

(293) The security requirements for the project are enshrined in a Framework Agreement and its First Implementing Contract, signed on 28 July 2020, between Czechia, ČEZ and EDU II (investor/owner). These instruments regulate the first stage of the project, up to the selection of the engineering, procurement and construction ('EPC') contractor. The Framework Agreement entrusts the Czech Republic with substantial information and veto rights in relation to the investor in the course of the Dukovany Project, including control over the tender process for the construction of a new nuclear power plant. In practice, this means the State has the right to obtain access, on a confidential basis, to information and documents regarding the tender procedure, as well as to submit comments and requests to the investor/owner regarding the tender procedure, including, without limitation, matters of essential security interests of the Czech Republic. The State also holds the authority to issue binding security-related instructions to reject bidders or sub-contractors at any stage for security reasons and to require contract modifications in order to reflect evolving security needs, thereby ensuring the possibility of dynamic intervention throughout the procurement process.

(294) The successful completion of the Security Assessment Procedure was a precondition for participation in the sui generis tender procedure. In accordance with an instruction from the Czech State reflecting the outcome of the Czech State's security assessment, the following three pre-selected bidders were invited to the tender: EDF, Korea Hydro & Nuclear Power ("KHNP") and Westinghouse Electric Company ("Westinghouse"). Due to identified security risks linked to foreign state influence, two potential suppliers (Rosatom and CGN) were not included in the Security Assessment Procedure and therefore were not invited to submit their bids, in application of the discretionary power of the contracting authority given that these companies come from uncovered (non-GPA) third-countries. Therefore, the scope of the invited bidders thus included all possible suppliers able to supply the NPP to EDU II, except Chinese and Russian suppliers. The fact that the tender was conducted under the security exclusion regime, including the applicable security-related constraints, was not contested by the bidders within the applicable legal deadlines.

(295) This is confirmed by the decision of the Supreme Administrative Court of 4 June 2025 and the decision of the Regional Court in Brno of 25 June 2025.

(296) The Commission has assessed the derogation invoked by the Czech authorities under Article 24(2) of Directive 2014/25/EU in relation to the award of the EPC contract for two units at the Dukovany site and two at the Temelín. The assessment confirms that the Czech Republic had identified, based on information provided by its intelligence services and the findings of the Standing Working Group on Nuclear Energy, the existence of concrete and genuine risks to essential national security interests, as described in paragraph (291) above, arising from the preparation, construction and operation of the new nuclear power plant units. The Commission further notes that considerations related to the adequacy and resilience of electricity generation formed part of the broader national security context within which those essential security interests were defined.

(297) To prove that those essential national security interests could not be protected within a competitive tendering procedure conducted in accordance with EU Public Procurement Directives, the Czech authorities argued that compliance with the procedural obligations under the directives would have likely compromised the protection of the national essential security interests. In particular, compliance with all the procedural constraints under the Directive would have obliged the contracting authority to grant simultaneous, unrestricted and full access to procurement documents to all qualified bidders, including sensitive and classified information which the Czech authorities do not lawfully disclose before completing State-led security screenings based on evolving classified intelligence. Such information could not be adequately protected through non-disclosure agreements or other conventional confidentiality tools, which are suitable to prevent commercial misuse of information but not to prevent espionage, foreign State coercion, or systemic risks arising from the supplier's country of origin.

(298) The Czech authorities argue that the risks identified by intelligence services evolve over time, requiring the Government to update security requirements and intervene dynamically in the tender. For these reasons, they consider that the application of a procurement procedure governed by the Public Procurement Act and Directive 2014/25/EU would have seriously jeopardised the essential national security interests, including those relating to the safety and the security of national infrastructure, as well as the energy security as an important element of national security.

(299) The Commission notes that it is not possible to ensure the reliability and trustworthiness of all suppliers and their subcontractors without possibilities to exclude bidders and subcontractors at any moment for security reasons, amend technical requirements in response to new intelligence, terminate any or all discussions or negotiations with all or some bidders, or make any subsequent contract modifications of a potentially substantial nature, e.g. to reflect the latest nuclear technology and security needs developments (variability of security threats and situation). Such intervention powers, which are indispensable given the nuclear nature of project and the associated national security risks, cannot be exercised within a procedure governed by Directive 2014/25/EU. The Commission therefore confirms that compliance with the Directive would have risked undermining the protection of those essential security risks.

(300) Furthermore, the Czech authorities stress that EDU II organised a competitive tender, while preserving the specific security-related requirements. This approach constituted a less restrictive and more proportionate measure than a direct negotiation by the State with a single pre-selected supplier, which would have eliminated or, at a minimum, significantly reduced competition and thereby likely led to higher prices and an increased level of State aid. By opting for a competitive procedure restricted to suppliers that had successfully completed the ex ante State's security assessment, Czechia preserved competitive pressure compatible with the protection of essential security interests. In the Commission's view, the constraints applied limited to those strictly necessary to protect sensitive information and to ensure that participating suppliers did not present security risks, while the intervention powers of the State were framed by explicit security objectives and remained subject to administrative and judicial review.

(301) The Commission services acknowledge that the Czech authorities organised a competitive tendering procedure among all the suppliers that had successfully completed the State's security assessment.

(302) The Czech authorities publicly communicated the launch of a competitive procedure, the identity of the economic operators invited to participate, and the requirement that participation was conditional upon passing a prior security assessment. While confidential information could not be publicly disclosed, the structure of the process, the criteria for participation, and the rules of the competition, including detailed information on the negotiation and the evaluation process, have been communicated from the start of the tender procedure to all bidders. Any limitations on transparency, including restrictions on the disclosure of confidential information and the prerogative of the authorities to intervene in light of security intelligence, were made known beforehand.

(303) The measures adopted appear proportionate to the essential security risks identified by the competent authorities. Rather than resorting to a direct award, Czechia opted for a competitive process restricted to pre-vetted suppliers, which constituted a less restrictive means of addressing those risks. The constraints applied are limited to those strictly necessary to protect confidential information and to ensure that participating suppliers did not present security risks. The intervention powers of the State, including the ability to take account of new intelligence or geopolitical developments, were framed by explicit security objectives and appear confined to what was deemed necessary and appropriate. The availability of administrative and judicial review mechanisms further indicates that the framework allowed for meaningful and balanced oversight.

(304) Considering all the above and based on the particular circumstances of the case, the Commission considers that the conditions for the application of the security exemption were met and concludes that the Czech Republic has demonstrated the compliance with the Directive 2014/25. The Commission therefore concludes that the conduct of the competitive procedure, limited to suppliers that had successfully completed the State's security assessment, respected the Treaty principles, including non-discrimination, transparency and proportionality, in so far as those principles are compatible with the protection of essential security interests identified, and the limitations applied appear proportionate to the risks identified.

6.2.1.3.4. Compliance with Articles 30 and 110 TFEU

(305) In the field of energy, any levy that has the aim of financing a State aid measure and forms an integral part of that measure needs to comply, in particular, with Articles 30 and 110 TFEU ([105]).

(306) According to settled case law, for a levy to be regarded as forming an integral part of an aid measure, it must be hypothecated to the aid under the relevant national rules, in the sense that the revenue from the charge is necessarily allocated for the financing of the aid and has a direct impact on the amount of the aid, and, consequently, on the assessment of the compatibility of that aid with the common market. ([106]) In particular, the concerned charge must be levied specifically and solely for the purpose of financing the aid at issue. ([107])

(307) Furthermore, it is also apparent from the case law that there may be no such hypothecation when the amount of aid is determined solely on the basis of objective criteria, not related to the allocated revenue, and subject to an absolute statutory ceiling. ([108]) In particular, the Court has held that there is no hypothecation when the national legislation establishes the aid amount between a minimum and maximum value regardless of the revenue from the tax. ([109]) Moreover, the Court has recently held that there was no hypothecation between the tax and the aid granted in a case where the amount of the aid was determined according to criteria unrelated to the allocated tax revenue and where national legislation provided that any surplus in relation to this aid had to be reallocated, as appropriate, to a reserve fund or the treasury, that revenue also being the subject of an absolute ceiling with the result that any surplus is also reallocated to the State's general budget. ([110]) To exclude the existence of a hypothecation link, the Court also took into account the fact that, where the revenues from the levy are insufficient to cover the total aid amount, the relevant Member State is required to cover the shortfall by means of contributions from its general budget.

(308) In the present case, the two-way CfD will be financed by: (i) any difference payments by EDU II; (ii) a levy paid by electricity consumers and (iii) contributions from the State budget (see recital (183)). As explained in section 5.3.6, in case the strike price of the two-way CfD is above the market prices of electricity, the State will need to finance the price difference through State resources, namely through the State budget and through consumption levies.

(309) Czechia further confirmed that while a levy may contribute to the financing of the measures, the financing would not depend on such a levy and the State budget would cover costs where required. Specifically, any deficits of the levy, will be ultimately covered by the general State budget (see recital (183)).

(310) It follows that the possible introduction of a levy in the Project in connection with the financing of the CfD does not have a direct impact on the amount of the aid and, therefore, does not form an integral part of the measure as it is not hypothecated to the aid under the relevant national rules. As a result, the compliance of the levy with Articles 30 and 110 TFEU is not assessed in the present decision.

([105]) Judgment of 17 July 2008, Essent Netwerk Noord and Others, C-206/06, ECLI:EU:C:2008:413, paragraphs 40 to 59.
([106]) Judgement of 22 December 2008, Régie Networks v Rhone Alpes Bourgogne, C-333/07, ECLI:EU:C:2008:764, paragraph 99 and case law cited.
([107]) Judgement of 22 December 2008, Régie Networks v Rhone Alpes Bourgogne, C-333/07, ECLI:EU:C:2008:764, paragraphs 100 and 104.
([108]) Judgment of 20 September 2018, Carrefour Hypermarchés and Others, C-510/16, ECLI:EU:C:2018:751, paragraph 21.
([109]) Judgement of 27 October 2005, Distribution Casino France and Others, C 266/04 to C 270/04, C 276/04 and C 321/04 to C 325/04, ECLI:EU:C:2005:657, paragraph 52.
([110]) Judgements of 20 September 2018, Carrefour Hypermarchés and Others, C-510/16, ECLI:EU:C:2018:751, paragraph 22 and of 10 November 2016, DTS Distribuidora de Televisión Digital v Commission, C 449/14 P, ECLI:EU:C:2016:848, paragraphs 70 to 72.

6.2.1.3.5. Compliance with energy law provisions

(311) As explained in recital (273) the Commission must take into account possible infringements of provisions of EU law other that those related to State aid where those infringements may arise from the aid measure itself or from its very object. It is therefore necessary to assess the compliance of measure 2, i.e. the two-way CfD with the relevant provisions of EU law.

(312) As regards the design of the two-way CfD, the Commission considers that the principles set out in Article 19d(2) of the Electricity Regulation apply to new two-way CfDs, such as instances where a Member State, without having the obligation to do so under the Regulation ([111]), decides to introduce a two-way CfD in relation to investments aiming to incentivise nuclear newbuild, as in the present case. The question whether a Member State is under the obligation to choose a two-way CfD pursuant to Article 19d(1) ([112]) is irrelevant in this regard as Article 19d(2) applies to all two-way CfDs, regardless whether they are mandatory or whether a Member State voluntarily decides to introduce a two-way CfD in relation to investments aiming to incentivise nuclear newbuild, as in the present case. The Commission considers that the Czech authorities have not demonstrated compliance with the design principles in Article 19d(2) of the Electricity Regulation, as explained in more details in section 6.2.2.6.1.

(313) Czechia also did not explain in the notification what will happen with proceeds from the CfD that flow back to the State. Without this information, the Commission cannot assess whether the measure is in compliance with the principles set out in Article 19d(2), point (d) and (e) of the Electricity Regulation and therefore raises doubts about it.

(314) As explained above, the Commission cannot confirm, at this stage, that the design of two-way CfD, as proposed by the Czech authorities, fully complies with the design principles set out in Article 19d(2) of the Electricity Regulation. Therefore, the Commission has doubts that the proposed measures do not infringe relevant provisions of EU law.

6.2.1.4. Conclusion

(315) For the reasons explained in section 6.2.1.3, the Commission cannot conclude, at this stage, that the Project fulfils the first (positive) condition of the compatibility assessment i.e. that the aid facilitates the development of an economic activity without breaching relevant Union rules.

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

6.2.2.1. Identification of the market affected by the aid

(316) The measures were designed to help decarbonise Czechia's energy system and address a security of supply concern covering the Czech market (see Section 2.2). At the same time, it has been established that the Czech market is well interconnected in the Core region ([113]) (see recital (17)). The aided investment concerns the construction and operation of two new nuclear reactors at the Dukovany site, which will produce electricity for supply into the national and interconnected European electricity market.

([111]) The requirement set out in Article 19d(1) to implement direct price support schemes for investment in new power-generating facilities the form of two-way contracts for difference or equivalent schemes with the same effects only applies to contracts concluded on or after 17 July 2027.

([112]) The requirement set out in Article 19d(1) to implement direct price support schemes for investment in new power-generating facilities the form of two-way contracts for difference or equivalent schemes with the same effects only applies to contracts concluded on or after 17 July 2027.

([113]) The Core region consists of the bidding zone borders between Austria, Belgium, Croatia, Czechia, France, Germany, Hungary, Ireland and Northern Ireland, Luxemburg, the Netherlands, Poland, Romania, Slovakia and Slovenia.

(317) The aid therefore affects primarily the market for electricity generation and wholesale supply, irrespective of the underlying generation technology. In addition to the primary wholesale electricity market, the investment may affect related markets such as the capacity remuneration market or the balancing and ancillary services market, where the NPP may provide services. However, these secondary markets are complementary and not independently affected in a material way by the aid, as the investment's main purpose and competitive effect are expected in the wholesale generation market.

(318) Furthermore, the market for the provision of nuclear technology is also relevant, as the selection of the nuclear technology provider constitutes an essential prerequisite for the implementation of the aided investment.

(319) As regards the geographical market, the Commission notes that Czechia is well interconnected with neighbouring countries (see recital (17)) in the Core region. However, price convergence among these countries is only partial.

(320) For the reasons above, the Commission considers that the relevant geographical market for the assessment of the measures at stake is at least national (Czechia) and it may extend into the neighbouring interconnected countries (in particular those in the Core region) insofar as cross-border flows and price signals create a homogenous competitive environment.

(321) For this reason, the relevant markets for the assessment of the measures at stake are the electricity market in Czechia and the electricity market in the Core region, as well as the market for the provision of nuclear technology.

6.2.2.2. Identification of the positive effects of the aid

(322) The transition towards climate neutrality involves the progressive phase out of fossil fuels starting from the most polluting ones. Most Member States have already announced their plans for phasing out coal over the coming years ([114]). Similarly, Czechia's commitment to phase out coal for energy and heat generation is announced in their NECP for 2033 (see recital (31)). These developments are expected to adequacy issues in the mid-long term (see recital (14)). This trend is expected to be observed in other Member States phasing out coal.

(323) The installation of new generation capacities therefore allows to maintain the necessary generation at the supply side, while contributing to the decarbonisation of the energy system. The measure therefore has positive effects on the market as it helps decarbonise the electricity system and will increase security of supply. Since the Core region is well interconnected, these positive effects would likely benefit the neighbouring Member States importing electricity from Czechia. By ensuring secure supplies when phasing out the most polluting fuels, nuclear generation also contributes to achieving Union decarbonisation objectives.

6.2.2.3. Necessity of State intervention

(324) In order to determine whether an aid measure is necessary, the Commission must assess whether the measure is targeted towards a situation where it can bring about a material improvement that the market alone cannot deliver. Aid which merely improves the financial situation of the beneficiary but is not necessary for the attainment of the intended objective cannot be considered to be compatible with the internal market. The Commission must therefore assess whether State aid is necessary to achieve the objective of promoting new nuclear investment in Czechia.

(325) Following consideration of the different options to achieve its policy objectives set out in section 2.3 and, using its right to choose between different energy sources under Article 194 TFEU, Czechia has concluded that new nuclear capacity is a necessary component to facilitate the development of the economic activity detailed in section 2.5 and under recitals (264)-(266) and that its promotion itself achieves the multitude of common objectives identified in section 2.

([114]) https://energy.ec.europa.eu/topics/clean-energy-transition/eu-coal-regions-transition_en.

(326) The Czech authorities maintain that the construction of nuclear power plants is unlikely to take place absent State aid support.

(327) Indeed, it remains unlikely that market forces alone would be capable of ensuring the timely delivery of the nuclear capacity necessary to facilitate the development of the economic activity, the development of electricity generation from nuclear energy sources in Czechia.

(328) According to the case law, Article 107(3)(c) TFEU does not make Member States' intervention through State Aid conditional upon the existence of a market failure, but it may be a relevant factor for declaring State aid compatible with the internal market ([115]).

(329) For new nuclear energy investments, the market failure arises principally due to three aspects: (i) scale of the capital requirement, (ii) longevity of exposure to market pricing signals, which are themselves distorted by interventions, and (iii) longevity of exposure to political decisions. The Commission considers also that the combination of those parameters is unique to nuclear technology.

(330) First, the scale of capital requirements for nuclear investments is particularly high. While the levelized cost of energy for nuclear generation is not necessarily higher than for other technologies, the long lifetime and large production capacity of nuclear power plants could only be compared to the largest of hydropower projects. These capital needs, reaching several billion of Euros, are further exacerbated by frequent and significant investment cost increases for new-built nuclear generation facilities. Indeed, particularly first-of-a-kind Generation III investments in OECD countries have been affected by construction delays and cost increases.

(331) Second, planned operation times of 60 years make it difficult to align typical durations of private investments or commercial loans with the lifetime of the Project. This is even more relevant in current electricity markets, which are significantly changed by the energy transition and the rapid deployment of renewable energies, as well as regulatory reforms accompanying this transition. In consequence, even the most experienced market participants struggle to make comfortable predictions for power prices in the far future and most electricity trades cover not more than 5 years in the future.

(332) Finally, nuclear energy remains subject to societal and political controversy, and investments in nuclear generation assets have to account for the risk of policy change. Thus, in order to succeed, investments in nuclear generation assets have to account for the risk of policy change and need ensure an adequate allocation of risks between parties in a transparent and responsible decision-making process.

(333) Those market failures in relation to investment in new nuclear power generating sources can be observed in all markets and remain a concern also for the Project.

(334) Therefore, there are clearly identified market failures with respect to investments in new nuclear energy sources in Czechia. In light of the lack of sufficient electricity generation capacity, of those market failures, and of the strategic goal of Czechia's energy policy, which aims at ensuring security of supply and long-term decarbonisation of electricity generation, support for the construction of new nuclear power sources in Czechia appears necessary.

(335) Based on the above, the Commission considers, at this stage, that State intervention is necessary to ensure the development of new nuclear capacities in Czechia.

([115]) Judgement of 22 September 2022, Austria v Commission, C-594/18 P, ECLI:EU:C:2020:742, paragraphs 67.

6.2.2.4. Appropriateness

(336) The Commission must determine in its assessment whether the proposed aid measures represent an appropriate policy instrument to address its objective, in this case to promote the development of nuclear power generation to decarbonise the energy system and compensate for a future supply gap.

(337) The Czech authorities argue that the proposed combination of aid measures is appropriate because it addresses three main market failures: (i) the exceptional scale of the capital investment requirement, (ii) longevity of exposure to market price signals, which are themselves distorted by interventions, and (iii) longevity of exposure to political decisions.

(338) According to Czechia the aid package addresses these market failures in a targeted manner, reflecting the unique characteristics of an investment in nuclear newbuild and avoiding support overlap/cumulation and excessive remuneration and protection. Specifically, in Czechia's view:

(a) The RFA is presented as addressing the capital-market failure by ensuring the availability and affordability of debt finance. Czechia argues that it reduces the risk of insufficient private lending, lowers the cost of debt and related fees, and allows financing to be arranged more quickly, including in the event of cost increases.

(b) The CfD is intended to address long-term market-price uncertainty by providing price stability, predictable revenues, and a reasonable rate of return - conditions that, according to Czechia, are necessary for investments of this magnitude and duration.

(c) The compensation mechanism for discriminatory policy changes or adverse impacts is designed to address nuclear-specific political and regulatory risks, notably the possibility of cost increases stemming from policy or legislative decisions. Czechia considers that the possibility of adjusting the RFA amount and the CfD strike price in such scenarios is necessary to limit these risks.

(339) Czechia also considered alternative measures, such as tax credits, capacity mechanisms, direct investment aid, or a RAB model, but concluded that none of these approaches could adequately address the combination of high upfront capital needs, long time horizons, and exposure to policy risk inherent in the Project.

(340) The Commission acknowledges that, given the scale, duration, and technological complexity of the Project, a single measure is unlikely to address all relevant market failures. Some degree of complementarity between different measures may therefore be justified. However, the Commission notes that Czechia has not demonstrated in a sufficiently detailed manner why each specific measure, and the chosen combination, is strictly necessary to address the identified market failures, or why alternative designs of the same broad instruments could not achieve comparable results with less distortion.

(341) The Commission notes that the proposed measures address multiple categories of risk. The appropriateness of the aid instruments depends on ensuring that the investor retains meaningful exposure to construction, operational, and market risks and remains incentivised to manage them efficiently. At this stage, the Commission cannot conclude that the proposed package achieves an appropriate balance between reducing risks to enable the investment and maintaining incentives for efficient behaviour.

(342) While the Commission recognises that risk mitigation is necessary for nuclear investments of this nature, it does not consider it appropriate to reduce the Project's overall risk profile to a level comparable to that of a regulated business such as a TSO, as Czechia proposes (see recital (87)). A generation project must retain a degree of market and operational exposure that reflects its role within a competitive electricity market and avoids excessive risk transfer to the State.

(343) The Commission considers that excessive risk protection could weaken the incentives of EDU II and its contractors to manage costs, meet deadlines, and optimise Project performance. If downside risks were largely absorbed by the State, the risk of moral hazard would increase. This is particularly relevant for nuclear projects, where construction, regulatory, and technological risks are inherently high. Over-protection could therefore amplify the likelihood of cost overruns or delays, shifting undue burdens onto the State.

(344) Furthermore, guaranteeing a fixed return or fully insulating the operator from operational or regulatory risks could create a misalignment between risk and responsibility. If key decisions regarding safety investments, maintenance schedules, long-term operational planning, or supply-chain oversight could not materially affect the operator's financial position, this could diminish incentives for long-term efficiency and prudent operational behaviour, resulting in higher overall costs.

(345) In this context, the Commission notes that Measure 3, as currently described, lacks sufficient detail to allow a complete assessment of its design and appropriateness, particularly regarding the scope of protections offered and the conditions under which they would apply. Similarly, the mechanisms for updating the CfD strike price during the operational phase and for providing additional support once the CfD expires remain insufficiently specified. The lack of definition prevents the Commission from assessing whether these mechanisms are appropriate for addressing the identified market failures, or whether they may unduly reduce the risks borne by the beneficiary.

(346) Regarding the proposed two-way CfD, the Commission acknowledges that the design aims to preserve partial market-risk exposure by limiting the CfD duration to 40 years - shorter than the expected 60-year lifetime of the NPP - and by using a remuneration formula that seems to encourage efficient operational behaviour. However, essential elements such as the definition of the reference price are not yet sufficiently specified. Depending on the approach chosen, the reference-price definition or other unspecified design features could materially affect the operator's exposure to market signals and therefore its incentives for efficient market participation.

(347) For these reasons, the Commission has doubts at this stage as to whether the proposed combination of support measures and the aid package design are appropriate to ensure the development of that Project. The Commission therefore invites interested parties to comment on the appropriateness of the aid instruments proposed by Czechia.

6.2.2.5. Proportionality

(348) To assess the proportionality of a measure, the Commission must verify that the measure is limited to the minimum that enables the successful completion of the Project for the attainment of the objective pursued.

(349) To assess the proportionality of the aid in the present case, the Commission needs to take into account the combination of the measures proposed by the Czech authorities, namely the RFA, the CfD, and the protection mechanism against policy changes and adverse impacts.

6.2.2.5.1. The aid package

(350) Regarding the 40-year proposed duration of the Contract for Difference, the Commission notes that it is broadly aligned with the 30-year loan repayment period and considers such alignment justified, as it allows for stable revenues necessary to ensure loan repayment and a stabilisation phase after the start of operations in light of technical challenges observed in comparable projects. Nevertheless, a 40-year duration remains at the upper end of what has been seen in other similar cases. For the current proposal, the Czech authorities need to still clarify the timeframe and conditions under which EDU II will notify the start date of the CfD (see recital (182)), and the longstop date (i.e the final deadline by which the start date of the CfD must occur) in order to ensure consistency with the rationale underpinning the need for a 40-year CfD duration.

(351) The Commission considers that the mechanism for the revision of the strike price of the CfD raises several proportionality concerns due to the absence of key methodological details. While the authorities indicate that a downward revision of the Strike price after the RFA repayment period is envisaged to avoid excess revenues (recital 204), they have not provided the criteria, formula, or triggers governing this adjustment. Without clarity on how the post-RFA reduction would be calculated, the Commission cannot assess whether such a revision would be limited to what is strictly necessary to prevent overcompensation, or whether it could allow undue discretion or excessive compensation. The lack of specificity at this stage prevents the Commission from determining whether the mechanism effectively maintains proportionality in the later years of the CfD.

(352) Likewise, the potential strike price revisions linked to the Additional Support mechanism (recital (205)) remain insufficiently defined. Although the authorities suggest that adverse effects may justify adjustments, they have not clarified what types of events would qualify, how these events would be verified, or what limits would apply to the adjustments. Without objective conditions and clear boundaries, such revisions could excessively reduce the beneficiary's exposure to construction, operational, or market risk, thereby increasing the aid beyond what is strictly necessary to incentivise the Project. In the absence of these details, the Commission cannot conclude that the mechanism would ensure a balanced allocation of risk and avoid transforming the CfD into a tool that insulates the beneficiary against normal commercial uncertainties.

(353) Finally, although the Czech authorities acknowledge that any updates affecting the calculation of CfD payments may require prior Commission approval and commit to providing a full list of potential updates at a later stage (recital (207)), this information is not yet available. Moreover, the interaction between these revision mechanisms and the annual indexation arrangements described in recitals (208) - (214) has not been sufficiently clarified, raising concerns about possible overlap, double-counting, or unintended inflationary effects.

(354) As set out in section 5.4, Measure 3 (protection against policy changes and adverse effects) may trigger compensatory adjustments, including changes to financial model assumptions (e.g. CAPEX, OPEX, load factors), modifications to inputs of the CfD formula in response to cost increases, increases in the RFA amount, or, where necessary, lump-sum payments. While the Czech authorities acknowledge that such adjustments could reduce the residual risk borne by EDU II and thus affect its allowed level of remuneration, the design of the mechanism remains insufficiently defined. In particular, the scope of events that would qualify as policy changes, the thresholds for triggering compensation, the magnitude and duration of potential adjustments, and the methodology for quantifying "Adverse impacts" have not been clarified. In the absence of such detail, the Commission cannot exclude the possibility that the mechanism may, in practice, shift an excessive portion of costs and risks to the State, affecting the proportionality of the measure.

(355) As explained in recital (342) and (343), the Commission considers that it would not be appropriate and proportionate for support measures to reduce the Project's overall risk profile to that of a regulated business, such as a network operator. Without a clear definition of the events covered, the limits of permissible compensation, and the mechanisms for quantifying adjustments under Measure 3, the Commission cannot verify that the measure retains sufficient exposure for EDU II to normal commercial and operational risks. Further specification will therefore be required to ensure that the measure does not lead to disproportionate risk mitigation or undermine the proportionality of the overall support package.

6.2.2.5.2. The target return

(356) The Czech authorities argue that the proposed measures achieve an appropriate balance in mitigating the Project's risks and ensuring that the aid provided is necessary and proportionate. However, based on the information available at this stage, the Commission maintains certain doubts regarding several key elements of the risk allocation and remuneration framework.

(357) The Commission observes that the strike price of the CfD will be set - and may be revised over the duration of the contract, so as to ensures that the Project reaches, over the lifetime of the power plant, a target equity IRR of [6-8]% for the investor.

(358) Czechia justifies the proposed target RoE of [6-8]% on the basis that the Project's risk profile is substantially reduced and, in their view, closely resembles that of a regulated business such as a transmission system operator. The Commission has doubts whether such a level of target RoE can be justified by corresponding reduction in risks. As set out above, the overall design of the measures raises concerns that the Project may benefit from disproportionate risk protection, which may not address genuine market failures and weaken incentives for efficient costs control and prudent risk management, ultimately leading to potential distortions of competition and market functioning. Furthermore, the Commission has doubts regarding the way certain RoE parameters have been estimated, including, the risk-free rate and the beta. In particular, the beta parameter would need to reflect and appropriate and proportionate level of overall risks born by the Project.

(359) The Commission notes that the RoE analysis is not supported by a benchmarking analysis against projects and investments with a risk profile similar to that of the Project. This analysis is needed to corroborate the final target RoE level.

(360) Concerning the dividend distribution policy, which will form an integral part of the calculation of the RoE, Czechia has not yet defined it. However, it argues that this policy will be adapted to meet both the constraints on the maximum allowed returns, as well as those of other agreements (e.g. overcompensation reviews). Consequently, EDU II will set a target distribution policy that will be compliant with clawback and gainshare mechanisms, the updates to the financial model, and the specific shareholders' investment considerations. However, as this aspect remains insufficiently explained, the Commission expresses doubts regarding it.

6.2.2.5.3. Financial model and the Project's costs and revenues

(361) Given the uncertainty surrounding certain assumptions and parameters - particularly the cost assumptions, which exert significant influence on the results of the financial model - the Commission considers that further scrutiny is necessary and maintains doubts as to whether the model works appropriately and ensures that the support is limited to the minimum required.

(362) The Czech authorities submitted a business plan for the Project as well as estimations for the costs and revenues of the Project.

(363) The sensitivity analyses in the business plan and financial model indicate that the Project economics are sensitive to variations in underlying assumptions, notably CAPEX and load factor estimations. In certain scenarios, CAPEX increases lead to higher RFA drawdowns and, consequently, require a higher Strike price to ensure debt serviceability. In the load factor scenarios, reductions in the assumed load factor result in material lower lifetime revenues, leading to deficits in the post-CfD period, where the Project is no longer able to fully cover its operating costs. By contrast, the model appears relatively insensitive to electricity price variations, which primarily affect revenues during the post-CfD period. The Commission notes that the treatment of commissioning delay sensitivities remains incomplete, as the Czech authorities intend to refine these analyses at a later stage.

(364) The Commission notes that the Czech authorities have not provided sufficient details regarding the underlying cost assumptions, or the benchmarks used to substantiate them, in particular with respect to the CAPEX costs as well as the fixed and variable operational costs assumptions. While the authorities indicate that these values reflect the anticipated construction and operational costs of future nuclear capacity, no comprehensive breakdown or supporting evidence has been submitted to demonstrate that the assumptions are credible, adequately justified, or consistent with sectoral practice. In the absence of such information, the Commission has doubts as to whether these cost elements are proportionate.

6.2.2.5.4. Overcompensation control mechanism

(365) Czechia intends to introduce an overcompensation control mechanism designed to limit excess profits that could arise from more favourable than expected market conditions, such as lower costs or higher revenues, both during and after the CfD period. As mentioned in recital (120), the mechanism would operate on the basis on an ex-post assessment of EDU II's realised RoE and could trigger adjustments to the Project's profitability in order to ensure that the beneficiary is not overcompensated.

(366) According to the Czech authorities, allowing the plant to retain a margin of [0.5-2.0] percentage point above the target equity IRR, referred to as the motivation factor, before clawing back excess profit is intended to strike a balance between preventing overcompensation and preserving incentives for efficient operation and cost control. The authorities argue that this margin provides the beneficiary with a modest reward for outperforming baseline assumptions without undermining the overall discipline of the mechanism.

(367) The Commission, however, has concerns regarding the proportionality of both the overcompensation mechanism and the motivation factor. In particular, the mechanism permits an increase in RoE from the target [6-8]% to [6-8]% with no sharing of additional profits with the State within that band. Allowing the beneficiary to retain all additional profits between the target RoE of [6-8]% and [6-8]% appears disproportionate given the extensive risk-mitigating measures already in place and may grant unwarranted windfall gains. While the Commission understands that profits above [6-8]% are to be fully returned to the State, the resulting "cliff-edge" structure risks creating distorted incentives for the beneficiary to manage reported returns so as to remain just below the threshold.

(368) In light of the above, the Commission cannot conclude at this stage that the mechanism effectively prevents overcompensation or ensures that support remains limited to the minimum necessary.

6.2.2.5.5. Conclusion on proportionality

(369) For reasons outlined in the preceding sections, the Commission has doubts as to whether the combination of the proposed support measures and the corresponding aid package for the Project is proportionate for ensuring the development of that Project. The Commission therefore invites interested parties to comment on the proportionality of the aid measures proposed by Czechia.

6.2.2.6. Avoidance of undue negative effects on competition and trade

(370) For the aid to be compatible with the internal market, the negative effects of the aid measure in terms of distortions of competition and impact on trade between Member States must be limited and outweighed by the positive effects. In particular, it is important to avoid any potential undue negative effects on competition and trade.

(371) Czechia argues that the direct selection of EDU II as Project promoter is justified because ČEZ, its founding shareholder and the country's sole nuclear operator, possesses unique experience and had already undertaken extensive preparatory work at the Dukovany site (see recitals (139) to (143)). These arguments appear credible given ČEZ's long-standing role in nuclear generation, its familiarity with Czech regulatory and licensing frameworks, and the substantial investments it had already made in the Project (recitals (142) to (146)). Czechia further explains that only a very limited number of sites in the country are suitable for large nuclear reactors, and that replacing EDU II with a different promoter would require repeating site-specific work, causing significant delays and at least EUR [200-700] million in additional costs (recital (149)). In this context, it appears that the reliance on EDU II, an entity created specifically for the Project (recital (138)), provides a credible and economically rational basis for proceeding without a competitive process since EDU II appears uniquely suited, in the Czech context, to deliver the Project efficiently.

6.2.2.6.1. The design of the 2-way Contract for Difference

(372) As mentioned in recital (181), the Czech authorities propose to provide direct price support in the form of a two-way CfD. According to the Czech authorities, the CfD will be capability-based, meaning that remuneration is linked to the NPP's capability to generate electricity.

(373) The Commission considers that the CfD must be designed in a manner that does not distort the beneficiary's efficient operation decisions, which should remain guided by market price signals in order to yield system-optimal outcomes. Specifically, the CfD should not distort the operator's incentives to generate electricity when the market price exceeds its short-term variable costs, nor should it discourage reduction in output when prices fall below that level. Similarly, the beneficiary must retain incentives to schedule maintenance during periods that would lead to minimal costs while accounting for the maintenance costs themselves and the foregone market revenues. Although nuclear units typically operate with stable generation profiles and high availability, the future electricity system, characterised by a higher share of renewables with low marginal costs, may exhibit more frequent periods of low or negative prices. Depending on the developments of flexibility options such as storage or demand response, reducing output during such periods could be an efficient response that should not be distorted by the CfD.

(374) The Commission notes that the power plant will be directly trading on the markets, allowing direct exposure to market signals. The Commission assessed the CfD settlement term which aims both to ensure revenue stability for the power plant and to prevent overcompensation. The Commission considers that several essential design elements of the CfD remain insufficiently specified, preventing the Commission from fully assessing whether the mechanism maintains efficient operational and maintenance incentives. In particular, the definition of the reference price has not yet been finalised. For example, it remains unclear how the reference price will be determined in periods when the plant is not trading. These features are critical to evaluating whether the CfD appropriately guides operation and maintenance decisions. The explanations provided so far do not allow the Commission to understand fully how the reference price will be calculated or whether it will be based on market prices that are meaningfully independent from the prices actually achieved by the beneficiary.

(375) The Commission further notes that the reference price of the CfD is calculated as the weighted average price on all markets, in which the units will be trading, including the PPA prices. The Czech Republic explained that this ensures that the basis risk for the power plant is mitigated, and that the underlying rationale is to allow EDU II to act on all potentially relevant markets. While the Commission agrees that the reference price should be based on market prices that are largely independent of the remuneration received by the plant, the inclusion of PPA prices raises concerns. Czechia has explained that PPAs would be allocated through auctions to minimise the risk of aid being channelled to off-takers. However, if actual PPA prices feed into the CfD reference price, the mechanism could largely insulate the plant from the consequences of securing low PPA prices, thereby weakening its incentives to negotiate profit-maximising PPA terms. The Commission is therefore concerned that this design feature may increase the risk of aid being passed through to consumers via low-priced PPAs.

(376) With respect to the reference volume of the CfD, while a production-independent two-way CfD can, in principle, support appropriate market responsiveness, the Czech authorities have not yet supplied the necessary detail to confirm that the proposed design achieves this. Further clarification is therefore required before the Commission can assess the mechanism's compatibility with the relevant principles.

(377) Furthermore, the information provided does not enable the Commission to assess how the power plant would be incentivised to react to short-term price signals, such as reducing output during periods of very low or negative prices. While a production-independent two-way CfD can, in principle, support such behaviour, it remains essential that the design also allows the operator to buy back previously contracted forward volumes on short-term markets when prices fall below the NPP's marginal costs. Without this, the operator may lack the flexibility needed to respond efficiently to market conditions.

(378) More generally, the Commission recalls that the operator must retain autonomy to define its own trading strategy, including decisions on whether and to what extent to sell electricity through PPAs, and must remain responsible for managing its own imbalances. A trading strategy prescribed by the State would not be compatible with the principle that the operator should remain fully subject to market incentives. Although trading activities may be outsourced, the Commission considers that responsibility for maintaining balance must remain with the generating facility.

(379) Finally, as regards the entity responsible for paying the aid (see recital (183)), the Commission notes that Czechia currently has a single NEMO ([116]), OTE, which operates on a monopolistic basis. In this context, it does not appear problematic that OTE acts as the paying agent, provided that it treats the beneficiary in a non-discriminatory manner compared with other market participants. However, should more NEMOs become active in Czechia in the future, the current arrangement might need to be reviewed to ensure that the payment structure does not distort competition between them.

6.2.2.6.2. Effects on market structure and spillover of aid

(380) The Commission notes that the Czech electricity generation market is already highly concentrated, with the ČEZ Group holding 71.5% of net electricity production and controlling 45.56% of dispatchable capacity and over 71% of total generation capacity (see recitals (151) to (154)). The Herfindahl–Hirschman Index (HHI) indicates a highly concentrated market.

(381) The Commission considers that such market concentration could be detrimental to efficient market competition as it may constitute a barrier to entry for new market players and pose a liquidity risk by limiting the number of supply offers available. In such a market context, any addition of new capacity linked to the incumbent operator inherently carries the risk of reinforcing or entrenching existing market power.

(382) The Czech authorities argue that ČEZ's market share is expected to decline over the coming decades due to the gradual retirement of coal and lignite plants, but these projected reductions are subject to uncertainty and depend on the evolution of market entry, new capacity additions, and regulatory developments. Even if the Project contributes only less than 5% to dispatchable capacity and less than 8% to total capacity, the fact that the baseline level of concentration is exceptionally high means that the incremental effect may still be significant. Moreover, nuclear generation provides stable, large-scale, baseload output, which can amplify the competitive influence of operators controlling such assets.

(383) The Czech authorities maintain that the measure will not strengthen ČEZ's market position because EDU II, as a new entity, will be the direct beneficiary of the aid, with the State holding an 80% share and ČEZ retaining only a 20% minority stake. While the establishment of a separate legal entity and the dilution of ČEZ's ownership reduce the direct link to the incumbent, these factors do not, on their own, eliminate the potential for competitive distortions. The Commission cannot exclude at this stage that ČEZ will be structurally connected to EDU II through its shareholding and may also provide operational, technical, or trading support, which can confer advantages compared to other market participants.

(384) The Commission further notes that the trading strategy of the NPP will be jointly defined by EDU II and the Czech State, with the State exercising an oversight function. While the Czech authorities argue that this involvement is justified because the State is counterparty to the CfD, the trading strategy itself remains insufficiently specified at this stage (see recitals (215) and (216)). On this basis, the Commission cannot fully assess whether the State's involvement will remain purely supervisory, whether it could inadvertently shape commercial decisions, or whether it might be used in a way that directly or indirectly favours ČEZ.

([116]) Nominated Electricity Market Operator (NEMO). A NEMO is an entity responsible for operating national or regional integrated day-ahead and intraday electricity markets (market coupling) to ensure efficient cross-border power trading.

(385) The Commission also notes EDU II may delegate trading activities to third parties, subject to competitive tender procedures (see recital (219)). While this structure could support independence from ČEZ, it leaves open the possibility that ČEZ or related entities could participate in, or win, such tenders, thereby recreating channels for coordination or information flow. The current description does not define specific conflict-of-interest safeguards, limitations on the use of ČEZ-linked traders, or monitoring mechanisms to ensure that trading delegation does not re-establish links between EDU II and ČEZ. As a result, the possibility of indirect consolidation of ČEZ's market position cannot be excluded at this stage.

(386) The Czech authorities argue that capacity withholding incentives are limited because ČEZ is only a minority shareholder, EDU II's governance structure prevents influence by ČEZ, interconnection is high, and EDU II faces strong economic incentives to produce when profitable (recitals (222) to (225)). These considerations mitigate concerns about explicit manipulation. However, concerns remain whether the trading and governance set-up proposed, in practice, is sufficient to ensure sufficient competitive constraints on ČEZ and limit its influence on price dynamics. The analysis and commitments in recitals (223) and (224) remain high-level and do not yet specify how monitoring will occur and how coordination risks will be assessed.

(387) The commitment that at least 70% of EDU II's output will be sold on organised markets and the remainder through objective, transparent and non-discriminatory auctions (recital (220)) is, in principle, capable of supporting competitive price formation and limit ČEZ influence. The regulatory oversight of auction rules by the Czech energy regulator also represents a safeguard. Nevertheless, the detailed auction framework - including product definitions, lot sizes, eligible parties, minimum conditions, etc. - remains under development (see recital (221)). Given the scale of EDU II's output, even small choices may significantly affect liquidity and market outcomes. Therefore, in the absence of fully specified, binding rules, the Commission cannot yet conclude that the trading strategy will operate in a manner that prevents undue advantages to EDU II or to ČEZ.

(388) Furthermore, the Commission considers that the CfD design and the lack of clear and binding provisions and conditions on the trading strategy of the NPP, there is a risk of aid spilling-over to final electricity consumers via bilateral contracts at below-market prices cannot be fully excluded.

(389) First, the Commission notes that the inclusion of PPA prices in the reference price used for CfD settlement creates a structural risk that State aid may be passed on to PPA off-takers. Because the reference price is to be calculated as a weighted average of prices across all trading venues, including PPAs, low-priced PPAs would directly reduce the reference price and trigger higher CfD payments. This design feature weakens EDU II's incentive to negotiate PPAs at market-reflective levels, as any revenue shortfall arising from discounted bilateral contracts would be partly or fully compensated by the State through the CfD. The Commission is therefore concerned that this mechanism may allow EDU II to offer PPAs at artificially low prices, thereby transferring the benefit of the aid to consumers or specific market participants.

(390) In addition, up to 30% of EDU II's output may be sold through auctions or PPAs under objective and non-discriminatory terms (see recital (220)), but the detailed auction and contract design is still under development (see recital (221)). Given the scale of EDU II's production, incomplete safeguards regarding product definitions, minimum prices, eligible counterparties, and auction transparency could create opportunities for downstream actors to benefit from below-market pricing and may affect market liquidity. This risk is amplified by the incomplete specification of the trading strategy, which may leave room for commercial decisions - such as the pricing of bilateral contracts - to be aligned with broader policy objectives rather than market-responsiveness incentives.

(391) Furthermore, the State's role in jointly defining the trading strategy with EDU II (see recital (215)) raises additional concerns. Although the Czech authorities state that this involvement will be limited to oversight, the Commission notes that such participation could, in practice, influence price-setting behaviour, particularly with regard to PPAs targeted at industrial consumers or other strategic sectors. In such circumstances, the CfD mechanism would again compensate EDU II for offering prices below market levels, allowing aid to flow indirectly to selected buyers and potentially distorting competition in downstream electricity markets.

(392) As regards the possible impact of the measure on competition in the nuclear technology supply market, the Commission expects such impact to be at most indirect and in any case, limited. The Commission notes that, despite non-application of public procurement rules, ČEZ/EDU II organised a competitive tender to select the EPC contractor (see section 3.3). By enabling multiple qualified suppliers to participate under the same conditions, the Commission considers that the selection procedure prevented any undue advantage for a single bidder and helped preserve market dynamics, thereby minimising potential distortions in the nuclear technology supply chain.

(393) In conclusion, while the proposed trading framework contains several pro-competitive features, including mandatory market-based sales, auction obligations, regulatory supervision, and incentives against capacity withholding, the Commission notes that substantial elements of the trading strategy remain undefined. As long as the reference price methodology, auction rules, delegation safeguards and State oversight parameters are not fully detailed, the Commission cannot conclude that there are sufficient safeguards to ensure that ČEZ's existing market power is not consolidated or indirectly reinforced and to prevent that aid is transferred to consumers or specific market participants. Further specification and enforceable ring-fencing measures will be required to address these concerns.

(394) For the reasons set out above, the Commission has doubts on the impact that the notified measures will have on competition and trade in the electricity markets.

7. COMMISSION'S DOUBTS AND GROUNDS FOR OPENING THE FORMAL INVESTIGATION PROCEDURE

(395) The Commission considers at this stage that the notified measures, together with the equity contribution by CEZ to EDU II and the sale of EDU II's shares to the State, are part of a single intervention which involves State aid within the meaning of Article 107(1) TFEU and supports the development of the economic activity of nuclear electricity generation. The Commission also considers, as of yet, that State support for the Project is necessary and has an incentive effect.

(396) At the moment, based on the information submitted by Czechia, the Commission does not have sufficient elements to conclude whether the conditions for the compatibility of the aid with the internal market in accordance with Article 107(3)(c) TFEU are met, in particular whether the aid is appropriate and proportionate, and that undue negative effects on competition and trade are avoided. Furthermore, the Commission cannot confirm, at this stage, that the design of two-way CfD, as proposed by the Czech authorities, fully complies with the design principles set out in Article 19d(2) of the Electricity Regulation and that the proposed measures do not infringe relevant provisions of EU law

In the light of the foregoing considerations, the Commission, acting under the procedure laid down in Article 108(2) TFEU, requests Czechia to submit its comments and to provide all such information as may help to assess the aid, within one month of the date of receipt of this letter. It requests your authorities to forward a copy of this letter to the potential recipient of the aid immediately.

The Commission wishes to remind Czechia that Article 108(3) of the TFEU has suspensory effect and would draw your attention to Article 16 of Council Regulation (EU) 2015/1589, which provides that all unlawful aid may be recovered from the recipient.

The Commission warns Czechia that it will inform interested parties by publishing this letter and a meaningful summary of it in the Official Journal of the European Union. It will also inform interested parties in the EFTA countries which are signatories to the EEA Agreement, by publication of a notice in the EEA Supplement to the Official Journal of the European Union and will inform the EFTA Surveillance Authority by sending a copy of this letter. All such interested parties will be invited to submit their comments within one month of the date of such publication.