

**Report of the Republic of Slovenia on progress in the promotion
of cogeneration on the basis of Article 6(3) of Directive 2004/8/EC**

Ljubljana, February 2007

I. Transposition of Directive 2004/8/EC

1. Activity to date in connection with notification of transposition of the Directive

To date, Slovenia has still not sent the Commission notification of the transposition of Directive 2004/8/EC into Slovenian legislation. Notification of transposition will be sent to the Commission as soon as the acts necessary for the implementation of Directive 2004/8/EC are adopted. We enclose with the Progress Report a preliminary table showing the correlation between the provisions of Directive 2004/8/EC and existing regulations in the Republic of Slovenia relating to cogeneration. It is evident from the preliminary correlation table that the greater part of the provisions of Directive 2004/8/EC are already transposed into the legislation of the Republic of Slovenia by existing regulations and that the provisions that remain open are linked to documents deriving from the Directive that are already in the process of being adopted.

The essential differences between existing regulations in Slovenia and the Directive are in the following provisions:

- definitions of cogenerated electricity
- criteria for efficiency of cogeneration
- calculation procedures under Annex II and Annex III.

2. State of transposition of the Directive into Slovenian legislation

The Republic of Slovenia is planning a thorough recasting of its regulations governing the production of electricity from renewable sources and high-efficiency cogeneration. The amended regulations will also include the complete transposition of all provisions of Directive 2004/8/EC.

As stated under the previous point, existing regulations to a large extent already include the provisions of the Directive on the promotion of cogeneration.

The existing situation in the field of cogeneration is regulated by the Energy Act and the decrees deriving from it, as follows:

- The Act amending the Energy Act (EZ), OGRS 118/2006, provides that producers of electricity from renewable energy sources and producers of electricity and heat with above-average efficiency in the cogeneration process shall obtain the status of qualified electricity producers (QP). QPs have a special (more favourable) position in the national electricity market. This position is defined by Article 29 of the EZ. Article 22(a) regulates the possibility of compulsory purchase of electricity from QPs at guaranteed prices or through the payment of a premium for independently sold electricity. Article 29(a) defines the granting of "Guarantees of Origin".

- On the basis of Article 71 of the EZ, QPs also have a slightly more favourable position than other electricity market participants (consumers and "ordinary" electricity producers) with regard to connection to the network.

On the basis of the general provisions of the EZ listed above, the following executive regulations have been implemented:

- Decree on conditions for obtaining the status of qualified electricity producer (OGRS 29/00 and 99/01),
- Decree on the rules for determining prices and purchasing electricity from qualified electricity producers (OGRS 25/2002),
- Decree on the issuing of guarantees of origin of electricity (OGRS 121/2005).

Although existing regulations to a large extent already regulate the situation of cogeneration of electricity and heat, the Republic of Slovenia has decided to undertake a thorough recasting of its regulations on "green" electricity and high-efficiency cogeneration. This recasting will be carried out by means of the adoption of a special act (working title: Act governing the generation of electricity from renewable energy sources (RES) and high-efficiency cogeneration of heat and power (CHP)).

The preparation of the act is currently in progress at the expert level. It is envisaged that a draft of the act will be ready in May or June 2007 and placed before the National Assembly in July 2007.

The usual time necessary for the adoption of laws in the Republic of Slovenia is:

- normal procedure: 6 months
- abbreviated procedure: 3–4 months.

While the new act is being prepared, the Republic of Slovenia has sent pre-notification to the Directorate-General for Competition of envisaged methods of support (subsidies) for electricity from RES and electricity from high-efficiency cogeneration. On the basis of the pre-notification, a preliminary assessment will be carried out of the conformity of the envisaged incentive schemes with the principles of permitted forms of state aids for environmental protection.

During the procedure to adopt the new act, the following deviations from the envisaged timetable may occur:

- Prolongation of the period for the issuing of the Commission's decision on Case C07/05, which is the basis for the formal commencement of the new legislative process
- Prolongation of the usual time limits in the procedure involving the Republic of Slovenia and the Commission for the approval of incentive schemes
- Prolongation of the periods envisaged for parliamentary procedure.

Since Directive 2004/8/EC requires that Member States ensure the issue, not later than six months after the adoption of harmonised reference values, of "Guarantees of Origin" for electricity produced from high-efficiency cogeneration, which will be defined on the basis of the criteria contained in the Directive and documents adopted by the Cogeneration Committee, the Republic of Slovenia will undertake some of the most urgent adaptations of existing regulations on cogeneration. In this way it will be possible to prepare in a significantly shorter time everything necessary to enable the implementation within the prescribed time limit of those activities that are compulsory under the Directive.

The most urgent changes to existing regulations will be as follows.

In late March 2007 the draft Decree amending the Decree on the conditions for obtaining the status of qualified electricity producer will be ready. This Decree will:

equalise conditions or criteria for defining high-efficiency cogeneration in domestic regulations with criteria from the Directive, as follows.

A special definition of cogeneration electricity "produced with high efficiency" will be introduced.

The compulsory use of reference values from the harmonised matrix (Commission Decision 2007/74/EC) in calculations of primary energy savings will be introduced.

The value of the compulsory primary energy saving which producers "with high efficiency" must achieve will be changed, from 8% to 10%.

It will be provided that the Guidelines for Annex II and Annex III are a compulsory part of the national methodology for defining the quantity of electricity produced from high-efficiency cogeneration.

With the Decree amending the Decree on the issuing of guarantees of origin of electricity, Article 8 of the latter will be amended in such a way as to prescribe the requirement that the status of qualified producer be defined in accordance with the procedures introduced by the amended Decree on the conditions for obtaining the status of qualified electricity producer.

When the umbrella act on "green" electricity and cogeneration is adopted, the aforementioned amended Decrees will be incorporated into this act and the executive regulations deriving from it.

3. Use of possibilities permitted by Article 10 of Directive 2004/8/EC

Slovenia will not use the possibilities or procedures permitted by Article 12 of Directive 2004/8/EC in its regulations and prescribed procedures for the definition of electricity produced from high-efficiency cogeneration.

4. Transposition of the Directive by regions

Slovenia will not carry out the transposition of Directive 2004/8/EC by regions or differently for different parts of the country.

II. Transposition of Commission Decision 2007/74/EC on harmonised efficiency reference values and related matters

1. Timetable for the transposition of the Commission Decision into Slovenian legislation

A general description of the transposition of Directive 2004/8/EC is given in Chapter I. It can be seen from this description that Slovenia is preparing a new umbrella act on the production of electricity from RES and the high-efficiency cogeneration of electricity and heat. This act and the executive regulations deriving from it will fully resolve the position of RES plants and

cogeneration plants. Since it is necessary to meet the obligation under Article 5(1) of Directive 2004/8/EC, the transposition of those articles of the Directive that are vital for the issuing of "Guarantees of Origin" will be done within the time limits set down by Article 5(1). Transposition will be effected by means of the decrees amending decrees described above.

The Decree amending the Decree on conditions for obtaining the status of qualified electricity producer will introduce a provision whereby in calculations of the proportion of primary energy saving (PES) it will be necessary to use the reference values from Commission Decision 2007/74/EC.

Annex 1 to the Decree on the conditions for obtaining the status of qualified electricity producer (OGRS 29/01 and 99/01), which deals with formulae for the calculation of primary energy savings (PES), will be adapted accordingly. It will furthermore be stated in the decree amending the decree that the formulae in procedures contained in the Guidelines for Annex II and Annex III, which will be adopted by the Cogeneration Committee, shall be applied directly.

The reference values currently applied in calculations of PES in Slovenia are stricter than the reference values contained in the matrix of harmonised reference values. The Slovenian reference values are, as regards electricity: $\eta_E=55\%$ if the connection is to a > 20 kV system. If the connection is to a ≤ 20 kV system, the reference efficiency is reduced to 50%. For micro-cogeneration, the reference efficiency is $\eta_E =45\%$. The reference efficiency for the production of heat is $\eta_Q = 100\%$ if the fuel is natural gas and $\eta_Q = 90\%$ in the case of other types of fuel.

The timeframe for the adoption of decrees amending the existing decrees is June 2007. In Slovenia, decrees are adopted by the government, which means that in view of practice to date we can expect the decrees to be adopted within the required time limits.

An important condition for the full transposition of the requirements of the Directive under Article 5(1) is the adoption and publication of guidelines for Annex II and Annex III in the Official Journal of the EU.

2. Commencement of implementation of granting Guarantees of Origin

The competent body for the issuing of the "Guarantee of Origin" for electricity produced from high-efficiency cogeneration in the Republic of Slovenia is the Public Agency of the Republic of Slovenia for Energy (the Energy Agency). The Agency is a member of the Association of Issuing Bodies (AIB) and has already been issuing "Guarantees of Origin" for "green energy" and RECS certificates for some time. The Agency is separate from the production and distribution of electricity in the country. The functions and role of the Agency in granting "Guarantees of Origin" are defined by the Decree on the issuing of guarantees of origin of electricity (OG RS 121/2005).

Although this Decree provides that the Agency shall also issue "Guarantees of Origin" for cogeneration electricity, these guarantees are for the time being not being issued. The reason for this is the fact that the method of determining the quantity of electricity produced from cogeneration under the Slovenian decrees is different from the method that is prescribed or that will be prescribed by the Directive and the regulations proceeding from the Directive.

Article 5 of the Directive provides that "Guarantees of Origin" shall begin to be issued not later than six months from the adoption of harmonised efficiency reference values. Harmonised reference values were adopted on 21 December 2006. The Republic of Slovenia plans to carry out the amendments to the decrees on high-efficiency cogeneration of electricity and heat within the above time limits so that the issuing of "Guarantees of Origin", calculated using harmonised efficiency reference values, will be possible from mid-2007.

3. Issuing and handling of guarantees under the AIB model

With the Decree on the issuing of guarantees of origin of electricity (OGRS 121/2005) the Republic of Slovenia adopted the model of issuing guarantees used by the AIB. The new act on "green energy" and high-efficiency cogeneration of electricity and heat will introduce additional provisions for tighter supervision of communication and recording of generated electricity that is entitled to "Guarantees of Origin". Additional requirements will also be introduced for the "certification" of electricity producers who receive "Guarantees of Origin" for electricity.

Under the method that has been used to date, producers entitled to "Guarantees of Origin" send monthly data on electricity generated to the system operator of the electricity network to which they are connected, and the system operator forwards these data to the Agency's database. The possibility of control is provided by periodic inspections. The existing regulations do not contain detailed prescriptions regarding measuring points, nor do they prescribe the more detailed verification of the measured results.

The new umbrella act will give public authority and broader functions to the Agency in the field of certifying "green electricity" and electricity from high-efficiency cogeneration. As stated above, this act is expected to be adopted in 2007.

4. Transposition of issuing of Guarantees of Origin by region

Slovenia will not transpose Commission Decision 2007/74/EC by regions and neither will the issuing of Guarantees of Origin be regulated by regions.

III. Reporting obligations

1. Reporting on the legislative framework for the "authorisation" of cogeneration units

Article 9(1) of Directive 2004/8/EC states that Member States or the competent bodies appointed by the Member States shall prepare a Report on the evaluation of legislative and regulatory provisions with regard to "authorisation" of power plants. The "authorisation" procedure is defined by Article 6 of Directive 2003/54/EC.

The above report will be prepared and submitted to the Commission together with the Report on national potentials for high-efficiency cogeneration. In the current Progress Report we shall briefly present the "authorisation" procedure or the procedure of issuing permits for power plants.

In Slovenia the following permits are necessary in order to install a power plant of any kind: the first is the "authorisation" or energy permit. This permit means that a plant can enter the national energy system. This permit is followed by an access permit and a construction

permit. Finally, an environmental permit must be obtained.

The procedure for obtaining an energy permit ("authorisation") supports the decision to install CHP plants.

The "authorisation" or the procedure for obtaining an energy permit for power plants, including cogeneration plants, is defined by Chapter V of the Energy Act (EZ; OGRS, 118/2006). Article 49 of the EZ provides that for every plant for the production of electricity with a nominal power of over 1 MW that is connected to a public network, it shall be necessary to obtain an "energy permit". The energy permit is issued on the basis of the application of the applicant. The deadline for the issuing of the energy permit is 30 days from receipt of the completed application. The conditions that must be met by the plant are: suitable location, conformity with national energy policy, energy efficiency, security of operation of the network to which the plant is connect, and the ability of the applicant to construct the plant for which the energy permit is being requested. The prescribed "authorisation" procedure, represented by the issuing of the energy permit, indirectly supports cogeneration. This support is evident in the following provisions:

- cogeneration units with a nominal power of under 1 MW do not require a special authorisation but merely a construction permit and the technical consent of the competent electricity network operator;
- in granting an energy permit to thermal power plants with a nominal power greater than 1 MW, priority must be given to cogeneration units ahead of traditional thermal power plants, in accordance with point 6 of Annex I and II of the Rules on the issuing of energy permits (OGRS 5/2007). If construction of a cogeneration unit is not possible, the applicant must justify this by means of a report;
- similarly, in the case of permits for boiler houses for district heating, the applicant is required to examine the possibility of constructing a CHP plant or a plant using biomass.

Support for cogeneration is also provided by Article 68(a) of the EZ, which requires, for new buildings with an area greater than 1000 m², or for the reconstruction of buildings with an area greater than 1000 m² in which energy supply systems are being replaced, that priority be given, as well as to heating or cooling with the help of renewable energy sources, to energy supply from cogeneration.

The placement procedure has been simplified for cogeneration units with a nominal power of up to 16 MW. Under the Decree on spatial planning measures of national importance (OGRS 54/2003 and 68/2005), these cogeneration units are not counted as national infrastructure and the procedure for approval of the location takes place at the local level.

For cogeneration units greater than 16 MW, the procedure is conducted at the state level on the basis of national site plans by the Ministry responsible for spatial planning. If the unit is conformity with the national energy policy and has an energy permit, the Ministry responsible for energy shall submit to the Ministry responsible for spatial planning an initiative for the preparation of a national site plan. In this way access is to a certain extent made easier for developers for some larger plants, since a national site plan takes precedence over site documents at a lower level.

Certain simplifications are also envisaged in the environmental impact assessment. Under Article 3 of the Decree on the categories of activities for which an environmental impact assessment is mandatory (OGRS 78/06), this assessment is not necessary for power plants (including cogeneration units) with a rated thermal input of less than 300 MW.

2. Report on national cogeneration potentials

On the basis of Articles 6(1) and 6(2) of Directive 2004/8/EC, the Criteria for the analysis of national potentials for high-efficiency cogeneration from Annex IV to Directive 2004/8/EC, and the Guidelines for determining national potentials for high-efficiency cogeneration (Committee meeting, 1 February 2006), Slovenia has prepared a Report on national potentials. The report was presented at the "Third JRC Enlargement and Integration Workshop on Cogeneration" in Petten, Netherlands (8-9 February 2007).

The Analysis of Potentials that has been prepared is based on the criteria introduced by the Directive.

3. Deadline for the delivery of the report on potentials

In accordance with the indications given at the workshop mentioned above, Member States will receive more detailed instructions for the preparation of the final version of the Report on national potentials. On the basis of these instructions Slovenia will complete its report and submit it to the Commission.

4. Reporting obligations by regions

Reporting obligations will not be implemented regionally.

IV. Support schemes

1. Existing support schemes for cogeneration electricity

Slovenia also provides financial support to the production of electricity in cogeneration units which meet conditions for obtaining the status of qualified electricity producer. Support is provided through a system of guaranteed purchase prices or the payment of premiums. The conditions that producers must satisfy are set out by the Decree on the conditions for obtaining the status of qualified electricity producer (OGRS 29/01 and 99/01). Not all cogeneration producers are entitled to these benefits. The producers entitled to support and the method of determining the level of support are defined by the Decree on the rules for determining prices and purchasing electricity from qualified electricity producers (OGRS 25/2002).

1.0 The conditions for cogeneration units are:

- achieving prescribed efficiencies and primary energy savings. Under currently applicable regulations, the prescribed efficiencies for plants larger than 1 MW are at least 78%. The prescribed PES must be $\geq 8\%$.

(Existing cogeneration plants for district heating had a five-year transition period in which an efficiency of 70% was sufficient to obtain QP status and receive support).

- Every year, qualified power plants which receive support must demonstrate to the relevant ministry their achievement of the prescribed efficiencies and primary energy

savings.

2. The systems used in Slovenia to stimulate purchase from qualified cogeneration plants are guaranteed purchase prices (feed-in system) and the payment of premiums (if the qualified plants sell the electricity themselves). In accordance with Articles 22(a) and 23 of the EZ, the system operator of the electricity network is responsible for purchasing all electricity from qualified producers or for paying premiums. If they sell electricity under the guaranteed purchase prices system, cogeneration units under 10 MW are not obliged to announce deviations from reference values. Deviations shall be covered by the system operator.
- 2.1. The funds for incentives shall be paid by all end-users of electricity as a supplement to the network charge,
- 2.2. The guaranteed purchase price (feed-in tariff) shall be determined as the cost price of electricity for individual types and sizes of power plants. In determining the purchase price the following shall be taken account: investment costs, expected return on investment, fuel costs and income earned by the power plant from selling heat. The purchase price shall be set by the government at least once a year.

The premium shall be defined as the difference between the cost price of individual types and sizes of cogeneration units, which is determined in the same way as under the preceding paragraph, and the average market price expected to be reached on the free national electricity market in the following period. Producers who believe that they will achieve higher selling prices than those predicted usually opt for the premium.

The forms of support used in Slovenia are essentially operating aid. Only certain types and sizes of qualified cogeneration units receive support in the form of guaranteed prices or premiums:

- up to 1 MW – all cogeneration units
- 1 MW to 10 MW – only cogeneration units that simultaneously produce heat for district heating
- existing cogeneration plants for district heating which exceed 10 MW – if they meet the conditions under the Decree on the conditions for obtaining the status of qualified electricity producer, their premium is set by their government once a year.

- 2.3. In 2001 Slovenia was not yet an EU Member State and therefore did not notify the current support scheme to the Commission. Slovenia followed the then generally accepted opinion that feed-in schemes, on the basis of the "PreussenElektra case", are not forms of state aid, while compulsory "quota" systems are state aid schemes.

In February 2006 DG Competition initiated proceeding C07/2005 against Slovenia in order to establish whether the scheme of supports for qualified producers in the country represents state aid. The proceeding has not yet been concluded.

- 2.4 The obligation to support qualified producers lasts for up to 10 years.

- 2.5 In 2006 the amount spent on support for cogeneration units was:

€12 342 000.00

2. New support scheme for high-efficiency cogeneration units

a. Slovenia is preparing changes to the way in which it promotes the production of cogeneration energy. For "micro" and "small" cogeneration production the guaranteed purchase (feed-in) system will be maintained. For other cogeneration units a system of operating aid in the form of premiums is envisaged. The changes should be realised through a new Act on "green" electricity and electricity from high-efficiency cogeneration.

b. As a precondition for a cogeneration unit to obtain operating aid, it must meet:

- high-efficiency criteria in accordance with Directive 2004/8/EC and Commission Decision 2007/74/EC on the matrix of harmonised reference values.

In addition to the above conditions, power plants will also have to meet additional conditions that are specific for Slovenia:

- that substantial savings of CO₂ emissions are generated
- that the aid only relates to net produced cogeneration electricity (excluding own use)
- that the power plant is new or "mainly" new.

c. The possibility to receive support will be extended to all types of power plants that meet the above conditions. It will apply both to cogeneration units for district heating and to industrial cogeneration units and possible agricultural cogeneration units. The possibility to receive aid will be extended to power plants of all sizes. The restriction of the nominal power of the power plant to 10 MW will be abolished.

d. Cogeneration power plants wishing to obtain support will have to carry out certification (similar to the acquisition of "Guarantees of Origin"), install the prescribed measuring and registration devices and enable periodic controls of operation and reporting.

e. The support schemes are conceived as operating aid for new or mainly new power plants in the initial years of operation. The method of determining operating aid, or premiums, will be in conformity with the Guidelines on state aid for environmental protection, C37/01. Slovenia will propose to the Commission that cogeneration power plants which meet the above conditions should receive operating aid for up to 10 years, with the proviso that the functioning of the scheme should be checked every 5 years. The support scheme is aimed at new power plants and will ensure, in our opinion, greater security of investment for investors in high-efficiency cogeneration power plants.

f. The preparation of the schemes is in the expert phase. Slovenia has requested the Directorate-General for Competition for technical collaboration on the definition of acceptable forms of support. The Ministry of Finance of the Republic of Slovenia has carried out the pre-notification procedure. A draft of the scheme will be sent to the

Commission for formal notification along with a draft of the new umbrella act. This is planned to take place in mid-2007.

- g. If the scheme is approved and the umbrella act is adopted, we envisage that after 2008 it will be possible to provide approximately € 20 million a year for support to new cogeneration units.

3. Regional support schemes

Support schemes on the basis of the Guidelines on national regional aid for 2007–2013 (2006/C54/08) will also be used in Slovenia, for programmes for the promotion of renewable energy sources and efficient energy use. These schemes should, in principle, not be used for electricity cogeneration projects. If, however, a cogeneration power plant, in view of its local or regional importance, receives aid on the basis of the Guidelines on national regional aid, this will be taken into account, in accordance with the principle of the prevention of accumulation of aid, when granting aid on the basis of premiums or guaranteed purchase prices.

V. Statistics

The Republic of Slovenia, via the Statistical Office of the Republic of Slovenia (SURS), sends all required data from the sphere of cogeneration of electricity and heat to Eurostat on the basis of the latter's instructions and prescribed methodology.

VI. Actual progress

A year after the adoption of Directive 2004/8/EC, the Commission commenced proceeding C07/2005 against Slovenia over incentives for "green" electricity and electricity from cogeneration. For this reason Slovenia has halted, until the conclusion of the proceeding, all formal changes to its regulations which might have the character of subsidies.

On the basis of Directive 2004/8/EC a regulatory framework was introduced for the issuing of "Guarantees of Origin" for electricity produced from cogeneration. On the basis of the above changes to regulations, the procedure will become operational by mid-2007.