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# EU and EnC

## Market

### EnC: Annual Implementation Report 2020

By Kosmas Karanikolas (Athens)

On 23 November 2020, the Energy Community published its 2020 annual report regarding the Contracting Parties performance in regards with the adoption of reforms on energy markets. The report demonstrates that the outbreak of the Covid-19 pandemic did not hinder Community's members to propel reforms in the fields of emissions abatement, energy efficiency, promotion of renewables and genuine market integration, albeit the transition's pace significantly varied among individual members. More specifically, Montenegro assimilated the required reforms faster than any other Contracting Party, while Ukraine mounted to the second place, succeeded by North Macedonia and Serbia. Kosovo and Albania displayed modest progress while Bosnia and Herzegovina and Community's new entrant, Georgia, held the last places.

The most significant advancements of the reported period, as far as energy efficiency is concerned, include the segmentation of Ukraine's gas transmission system, i.e. the largest relevant scheme in Europe, and the enactment of detailed, primary and secondary, energy efficiency legislation in Georgia. In addition, measurable progress has been attained in renewable energy generation, as it can easily be derived from the augmentation by 19% of the renewables capacities across the territory of the Community, predominantly in solar and onshore wind, albeit some Contracting Parties (North Macedonia, Serbia and Ukraine) are likely to fail to achieve their 2020 targets.

It must be noted that Contracting Parties' progress was not restrained to fields where the taking up of action was obligatory, but it also encompassed the combating of climate change. In this respect, albeit not burdened with a rigid legal obligation to do so, many Contracting Parties drafted integrated energy and climate plans, in line with the Governance Regulation (2018/1999), which constitutes an indispensable element of EU's Clean Energy Package. For instance, in spite of its non-participation in the EU's Emission Trading Scheme (ETS), Montenegro developed and launched its own cap-and-trade system. Moreover, several Contracting Parties (North Macedonia, Albania, Bosnia-Herzegovina and Georgia) established National Energy and Climate Plans (NECPs), namely 10-year schemes incorporating national measures aimed at ensuring compliance with the EU's existing energy and climate targets for 2030. In this regard, Kosovo accelerated its efforts to abolish the use of coal while North Macedonia unveiled a coal disengagement program.

On the other hand, there are areas where performances' optimization remains at stake. For instance, as depicted in the relevant report of the previous year (2019), it is anew highlighted that all Community's members that are partially based on coal for energy generation strived to comply with the emission limits furnished by the compiled National Emission Reduction Plans (NERPs), for at least one of the three pollutants (nitrogen oxides, sulphur dioxide and dust) covered by the LCP Directive, i.e. Directive 2001/80 on the limitation of emissions of certain pollutants into the air from large combustion plants. This tendency is undoubtedly alarming insofar emission ceilings become increasingly inelastic, leading to certain states', such as Kosovo, inability to abide by them, regard being had to all three pollutants. Furthermore, another source of concern arises from the imminent expiry of the transitional period regarding several powerplants', such as TPP Pljevlja in Montenegro, lifetime.

## Infrastructure

### Commission Proposal for Investment in Key European Energy Infrastructure Projects

by Konstantinos Ntallas (Athens)

On 1 October 2020, EU Member States voted on a Commission proposal to invest €998M in key European energy infrastructure projects under the Connecting Europe Facility (CEF), thus providing financial aid for ten projects (two for electricity transmission, one for smart electricity grids, six for CO2 transport and one for gas). The allocation of funds is in line with the objectives of the European Green Deal and 84% of the funding goes to electricity or smart grid projects.

The largest portion of the funding (€722M) will be allocated to the Baltic Synchronisation Project, with the aim of bettering the integration of electricity markets in Estonia, Latvia, Lithuania, and Poland. The remaining funds will be allocated to the Danube Ingrid (€102 million), a smart electricity grid project in Hungary and the Slovak Republic, the Porthos CO2 transport network project (€102 million) in Rotterdam, Antwerp and North Sea Port, the Bulgaria – Serbia Interconnector (€28 million) and the North Sea Wind Power Hub (€14 million).

## Competition & State Aid

### EU: Romanian State aid scheme on district heating systems approved (SA.55433)

by Viktoria Chatzara (Athens)

On 6 November 2020, the European Commission issued its decision on a support scheme notified to it by Romania, and concerning aid granted for the construction and/or upgrade of district heating systems (State Aid case No. SA.55433). The scheme in question provides for state support for the construction and/or modernization of district heating generation installations with up to a total 60 MW of heating equivalent, as well as of district heating distribution networks. The aid will be granted in the form of direct grants financed by EU Structural Funds managed by Romania. With respect to the support granted to district heating generation installations, the aim of the measure is to support the shift from the use of gas or coal-fired boilers (i.e. from fossil fuel energy production), which currently is the predominant one, to the use of renewable energy sources, such as biogas, biomass and geothermal heat production, which is expected to lead to significant overall decrease in greenhouse emissions (up to 48,000 metric tones of CO<sub>2</sub>) and other polluting substances, in line with the objectives of Europe's Green Deal. As far as the support granted to district heating distribution networks is concerned, it may cover up to a maximum of 20% of the overall investment. The overall support granted under the notified scheme is expected to amount up to approximately EUR 150 million, while the scheme will be in place until 2023.

According to the Commission, the support for the construction and/or upgrade of district heating systems is permitted in accordance with the Commission's 2014 Guidelines on State aid for environmental protection and energy, and under the conditions described therein, namely, provided that the projects benefitting from the aid meet the criteria of "efficient district heating" set by the Energy Efficiency Directive. After examining the notified scheme, the Commission determined that the aid will be granted either to district heating systems that are already considered to be "efficient" in accordance with the Energy Efficiency Directive definitions, or to systems that will become efficient due to the investments that will take place with the granted support. The state aid scheme was also found to be in accordance with the European Green Deal's Investment Plan: Romania used the flexibility provided under the Plan in relation to the maximum amount of support granted for district heating generation. The Commission also stated that the aid scheme is necessary, since the projects that will receive the aid would not be carried out without the granted support, and proportionate, taking into account the rate of return to be delivered by the supported projects. Taking the above into account, the Commission concluded that the state aid scheme is compatible with the internal market and the applicable EU state aid rules. The non-confidential version of the Commission's decision is expected to be published.

### Commission Initiates Preliminary Investigation on Belgian Capacity Mechanism

by Xenia Lympelopoulou (Athens)

On 21 September 2020, the European Commission announced its decision (Case Number SA.54915) to initiate the formal investigation procedure to determine whether a Belgian capacity mechanism is in line with EU state aid policy. The abovementioned decision was published on 16 October 2020 in the Official Journal of the European Union.

This investigation is the result of the recent notification of Belgium's plans to introduce a national market-wide capacity mechanism in order to incentivise energy capacity providers to offer their availability to the transmission system operator (TSO), and its further plans to replace the Belgian strategic reserve, which received the Commission's approval back in 2018. Belgium has concerns that in the future may not have enough generation capacity to meet electricity demand, given its decision to phase-out all nuclear capacity by 2025. So in order to secure the so-called "resource adequacy" introduces the abovementioned scheme under which the beneficiaries will be selected through a competitive bidding process and will have the obligation to be available to the TSO during shortages experienced by Belgium's electricity system. In exchange the successful bidders of this process will receive capacity payments for the duration of the capacity agreement.

The European Commission's investigation is intended to assess whether the abovementioned scheme is in accordance to the 2014-2020 Guidelines on State aid for environmental protection and energy. Particular concerns arising from a preliminary view include Belgium's insufficient demonstration of a clearly identified security of supply problem, which is an essential part in order to identify if the planned public support is actually needed and is also proportionate and limited to what is necessary. Moreover the Commission is concerned that the measure may discriminate against certain technologies such as renewable capacity or it may limit participation of cross-border capacity, which may distort competition in the internal market and affect trade between Member States. The Commission will also assess whether the so called "congestion revenues" that the TSO would receive from foreign capacity providers in exchange for allowing them to participate in the capacity mechanism would be allocated in a way that incentivises further interconnection between Belgium and its neighbouring countries, avoiding distortions on competition and trade. At this stage of the in-depth investigation Belgium has the opportunity to submit its comments on the preliminary Commission's concerns and to provide

all such information as may help to assess the measure, while the European Commission assesses the capacity mechanism scheme.

## Commission Approves Competitive Tender Mechanism in Germany (SA 58181)

by Pavlos-Ioannis Kasselakis (Athens)

On 25 November 2020, the European Commission rendered its decision on the enforcement of a competitive tender mechanism for the phase-out of hard coal in Germany (State Aid Case number SA 58181). By virtue of this decision, the European Commission approved a competitive tender mechanism aiming to compensate for early closure of hard coal-fired power plants in Germany. In more detail, the European Commission considered the urgent call for transformation to a climate-neutral economy (by 2050), which constitutes a vital objective of the European Green Deal itself. On the other hand, this drastic measure of early closure of coal-fired power plants presupposes that all interested businesses leaving the relevant market must be compensated accordingly. Competitive tenders were deemed to be an effective tool towards ensuring that the compensation is kept to the minimum needed, with an ultimate view to avoid any undue distortion of competition in the Single Market, given also the fact that EU State aid rules must at all times be respected.

As far as the tender mechanism is concerned, the German energy regulator will publish seven tenders between the years 2020 and 2023 for the closure of hard coal-fired and small lignite-fired (below 150 MW) power plants, which will take place annually until 2026. It should be noted that, according to the German coal phase out law, the use of coal for the production of electricity will have to be terminated by year 2038 at the latest. In addition, the determination of the winners will be based on transparent selection criteria, whilst the energy security of supply in Germany, as well as network stability, will also be taken into serious consideration. Despite that, the phase out of lignite in general, is not covered by the Commission's decision (apart from small lignite-fired power plants – below 150 MW), hence the compensation will be agreed between the German government and the operators without a tender mechanism. On this matter, a formal notification is expected to be delivered to the Commission, in order for the latter to assess the measure under EU State aid rules; this may also trigger the opening of an investigation procedure which will allow both Germany and interested third parties to submit their comments.

Furthermore, regarding the legal basis of the approval, the European Commission concluded that the issuance of a competitive tender mechanism is compatible under Article 107(3)(c) of the Treaty on the Functioning of the European Union. In particular, the Commission pointed out the exigent need to tackle any potential collision with the EU's Single Market regulatory scheme, whilst it remains confident for the existence of certain elements which ensure both the competitiveness of the tenders to be launched and the minimum necessary level of compensation to be given out to businesses leaving the market. However, the Commission did not take a final position on whether this measure provides the operator with an advantage over its competitors, and if it ultimately constitutes State aid. Nevertheless, it did stress the fact that the contribution of the measure to EU environmental and climate goals outweighs any potential distortion of competition; therefore it ultimately approved the measure under EU State aid rules.

Finally, it is worth noting that the interconnection of competition policy, and in particular state aid control, with the European Green Deal is not only relevant but rather necessary, so as to attain certain core objectives. Towards this reasonable cause, the Commission (DG Competition) has also launched a 'call for contributions' (dated 13 October 2020), in order to gather essential proposals and remarks from all interested stakeholders and market players; the results will support a conference which is expected early next year.

## RES

### The EU Strategy on Offshore Renewable Energy

by Mira Todorovic Symeonides (Athens)

On 19 November 2020, the European Commission communicated to the European Parliament and Council an EU Strategy to harness the potential of offshore renewable energy for a climate neutral future (COM(2020) 741 final). The aim is to increase Europe's offshore wind capacity from its current level of 12 GW to at least 60 GW by 2030, and to 300 GW by 2050 and 40 GW of ocean energy and other emerging technologies (such as floating wind and solar) by 2050. The estimated investment for this objective amounts to €800 billion. Further, the Commission intends to provide a clear and supportive legal framework for the offshore RES; support the collection of necessary funds for the sector's development; ensure a strengthened supply chain: manufacturing capacity and port infrastructure as well as the appropriately skilled workforce to sustain higher installation rates; and encourage the EU industry to develop offshore RES around the world.

The Strategy contains actions which the Commission intends to take to support the growth of the offshore renewable energy sector, which is subject to the EU environmental policy and legislation and integrated maritime policy. This will require:

- Maritime spatial planning for sustainable management of space and resources: The Commission will work together with Member States (MSs) to integrate in their national maritime spatial plans, offshore renewable energy development objectives based on their National Energy and Climate Plans. According to the Maritime Spatial Planning Directive, this should be submitted by all MSs by

31 March 2021. It is estimated that scaling up the industry in line with this Strategy requires less than 3% of the European maritime space and can be done in line with the goals of the EU Biodiversity Strategy; The MSs should together set ambitious targets for offshore renewables in each sea basin while the Commission plans in 2021 to prepare a legal framework to set joint MS commitments to deploy offshore renewable energy in relevant sea basins up to 2050.

- A new approach to offshore renewable energy and grid infrastructure: the Commission has pledged to publish, by 2023, a guidance on the coordination of cross-border sharing of costs and benefits for energy transmission projects. The framework for this cross-border engagement is to be provided through revisions to the Trans European Energy Infrastructure (“TEN-E”) Regulation, a long-term planning instrument designed to provide an integrated energy network.

- A clearer EU regulatory framework for offshore renewable energy: The Commission has already published the Guidance on Clarification of the electricity market rules (the Staff Working Document accompanying this strategy (SWD(2020) 273 final); has stated it will task the Electricity Stakeholder Committee with preparing amendments to the Grid Connection Network codes for offshore HVDC grids during 2021; the State aid guidelines on energy and environmental protection are to be revised by the end of 2021 while the guidance on cost-benefit sharing for cross border projects will be proposed during the same timeframe.

More specifically, the Guidance on Clarification of the electricity market rules focuses mainly on the specific category of offshore hybrid projects, which raise complex questions to be addressed to ensure that the regulatory framework is not a barrier to deployment. Thus it addresses some of the key questions concerning the application of the electricity market legislation to offshore developments. In particular, it explains how to design offshore projects in line with the current rules, especially the unbundling, market dispatch and cross-border trading rules; considers whether an adaptation of the current regulatory framework is needed to address the specific needs of investment incentives for hybrid projects; and examines the need for coordination on technical rules regarding connection to the electricity grid:

- Mobilising private-sector investment in offshore renewables - the role of EU funds: 2/3 of the private sector investment in offshore renewables is assessed to cover investments in grid infrastructure and 1/3 in offshore generation. The following EU funding instruments should play a strategic role in the roll-out of offshore renewable technologies: the Recovery and Resilience Facility; the InvestEU Programme; the Connecting Europe Facility; the Renewable Energy Financing Mechanism; Horizon Europe; the Innovation Fund under the EU Emission Trading System; and the Modernisation Fund (for Bulgaria, Croatia, Czech Republic , Estonia, Hungary, Latvia, Lithuania, Poland, Romania and Slovakia).

- Focusing research and innovation on supporting offshore projects: Currently research and innovation priorities in offshore wind revolve mainly around wind turbine design, infrastructure development, circular advanced materials and digitalisation. Other recent innovations target the developing wind turbine gearboxes compact enough to fit into a standard shipping container, while the technology for floating offshore wind in deep waters should be further developed to be commercially attractive.

- A stronger supply and value chain across Europe: the offshore renewable energy supply chain must be able to support the large increase in capacity and higher installation rates. For example, only a few European seaports are currently suitable for offshore energy assembly, manufacturing and servicing. Subsequently, the Commission and ENTSO-E plan to promote standardisation and interoperability among different manufacturers (to be operational by 2028) while the Commission, the MSs and industry should jointly work to promote these EU standards internationally.

## Consultation on the Revision of the EU Guidelines on State Aid for Environment and Energy

by Maria Ioannou (Athens)

In November 2020, the European Commission launched a first consultation with stakeholders in view of the future revision of the Guidelines on State aid for environmental protection and energy (OJ C 200, 28.6.2014, p. 1–55), currently in force until the end of 2021. Indeed, a revision of the Guidelines has been deemed as necessary in view of the implementation of other Union policies, namely, the European Green Deal. In light thereof, and with the aim of adoption of the new Guidelines by the end of 2021, the EC has already published its Inception Impact Assessment and is also expected to initiate a further public consultation on the draft text of the revised Guidelines.

The role of the Guidelines on State aid for environment and energy is pivotal in the achievement of objectives of common interest, as they assist Member States to by way of exception provide aid to projects that enhance environmental protection and sustainability and contribute to the efficiency and decarbonisation of the energy sector, while avoiding distortions of competition in the internal market. These Guidelines apply to most industry sectors covered by the Treaty on Founding of the EU (TFEU), including energy production from renewable sources (where State aid is classified either as investment or as operating aid), energy infrastructure as well as transportation. According to the fitness check performed in 2019 on the State aid Modernisation Rules of 2012, these Guidelines have thus far achieved their role but shall need to be adjusted in order to reflect not only the new industrial and technological advancements but also the new EU environmental and energy policy objectives as well as the need of re-launch of the Member States economies in the post-COVID 19 era.

## Progress on Clean Energy for EU Islands Initiative

By Kosmas Karanikolas (Athens)

On 27 November 2020, the far-reaching plan concerning generation of sustainable, low-cost energy on EU islands coupled with their disengagement from fossil fuels, namely the so-called “Clean Energy for EU Islands Initiative”, was conferred significant impetus insofar 22 further European islands situated in 7 different EU Member States (Croatia, Finland, France, Greece, Ireland, Italy and Spain) launched plans regarding their transition towards clean energy, while 7 more, including Crete (Greece), Mallorca (Spain) and the Azores insular complex (Portugal), demonstrated their intention to finalize and publish their transition agendas in the near future. It ought to be reminded that the aforementioned initiative - which rather qualifies as an implicit admission that several European islands, albeit having the capability to exploit their direct and unrestricted access to wind, sun and waves in order to achieve self-efficiency, remain extensively dependent on expensive fossil fuel imports for their energy supply - constitutes an integral part of the “Clean energy for all Europeans' package”. This initiative was commenced in May 2017 and was, further, effectuated in June 2020, through the subscription of a Memorandum of Understanding (MoU), undersigned by 14 coastal EU countries, introducing a framework for transnational cooperation regarding the facilitation of transition towards climate neutral energy production.

The sharing of knowledge on transition towards carbon resilient energy production is of outmost importance insofar islands' shift did not commence simultaneously; six European islands, namely Aran Islands (Ireland), Cres-Losinj archipelago (Croatia), Culatra (Portugal), La Palma (Spain), Salina (Italy), and Sifnos (Greece) were the first to implement the required alterations, forming up a “pilot project” and, in this respect, they represent an exemplar for other islands. Besides, the rather restricted territory of islands enables them to become the leaders in the pan-european effort for attainment of carbon-neutral energy systems as the successful implementation of the relevant measures on an island scale may be easily replicated and scaled-up to continental territories, with the necessary adjustments.

## Opinion of Advocate General on Retrospective Review of RES Tariffs

By Sofia Getimi (Athens)

On 29 October 2020 the Advocate General Saugmandsagraard delivered an Opinion on the Joined Cases C-798/18 and C-799/18, regarding the retrospective review of tariffs on Renewable Energy Sources. The Regional Administrative Court of Lazio in Italy referred this case to the ECJ for a preliminary ruling on whether a Member State which reduces the amount of incentives provided under support schemes for the promotion of renewable energy sources infringes EU law and the relevant European Directives. The Advocate General supported that the retrospective review and even abolition of tariffs for Renewable Energy Projects is compatible with the Energy Charter and the freedom to conduct a business and the right to property provided for by Articles 16 and 17 of the Charter of Fundamental Rights of the European Union and concluded that even if it interfered with these rights the interference would be justified and proportionate.

More specifically, Italy had enacted a support scheme which granted paid incentives for a period of twenty years for the promotion and use of renewable energy. The question posed by the Italian Court to the ECJ was whether national legislature could intervene in such a way and reduce the amount of tariffs granted under the support scheme despite the fact that the payment of those tariffs had already been provided for in the agreements concluded with the beneficiaries. The referring court questioned whether the new Italian legislation which reduced the amount of tariffs interfered with the rights of beneficiaries to conduct their business on the basis of these agreements and whether it is compatible with the Energy Charter which provides in Article 10(1) that each contracting state should “encourage and create stable, equitable, favourable and transparent conditions for ... investments in its area”.

The Advocate General concluded that Articles 16 and 17 of the Charter do not preclude the enactment of legislation by a Member State wishing to review and reduce the incentives provided by a support scheme in its territory. He also stated that the beneficiaries of the scheme who had already concluded private law agreements based on the support scheme previously applicable, do not have the legitimate expectation that the scheme will remain unchained over the entire duration of those agreements. He also states that Article 10 of the Energy Charter is not applicable in disputes between investors in the energy sector and their own Member State and thus noted that the new Italian legislation reducing the tariffs is compatible with EU law.

The European Commission and the Czech, German, Greek and Spanish Governments have intervened in this case and the court ruling is thus expected with great interest.

## Policy Guidelines on the Integration of RES Self-consumers into Energy Networks

by Agori Michopoulou (Athens)

On 28 September 2020, the Energy Community Secretariat published its final Policy Guidelines on the integration of renewables self-consumers into the energy networks. In 2018 the Energy Community Secretariat published the first Policy Guidelines concerning technical aspects of self-consumption schemes. After the adoption of the aforementioned Guideline, a legally binding framework for self-consumption was adopted in the European Union (EU) as part of the so-called Clean Energy for all Europeans Package (CEP). The purpose of CEP is to facilitate decarbonisation of the energy sector as well as set targets for diminishing greenhouse gas emissions, promoting renewable energy use and energy efficiency by the year of 2030 and establishing the necessary legal framework for the implementation of these goals. CEP poses an important role in the energy transition through the active participation of final customers in the energy market. Although, CEP is not yet a legal obligation in the Energy Community the importance of it is undoubtedly big. To be more specific, self-consumption allows final customers to benefit from the development of renewable energy technology and the associated cost-reduction as well as diminish their energy bills. On that note, it is worth mentioning that the Renewables Directive (2018/2001/EU), which was later launched, obligates EU Member States to put in place an enabling framework in order to better promote and facilitate the development of renewable self-consumption. The current Policy Guidelines replaced the Secretariat's 2018 Policy guidelines in order to be harmonized with CEP.

The aim of the new guidelines is mainly to provide advice to policy-makers of the Contracting Parties on the development of national regulatory frameworks conducive to renewables self-consumption and empowering final customers to actively participate in the self-consumption of renewable energy. Moreover, the Guidelines reflect the inputs received via public consultation, during which, all stakeholders submitted their views on the draft document. In more detail all of the participants pointed out that renewables self-consumers could play a significant role in achieving 2030 targets in the Energy Community, whereas the majority of the respondents found the existing legal framework in the Contracting Parties to be incomplete, inconsistent and insufficiently detailing the rules and procedures for customers to become prosumers in practice. The Secretariat emphasized that a well-structured, coherent and consistent legal framework is the most important precondition for the facilitation of self-consumption. To that end Policy Guidelines will be followed by practical examples on the legal and regulatory framework.

## Environment

### Wind RES in Alignment with the EU Nature and Biodiversity Protection Framework

by Maria Ioannou (Athens)

In November 2020, the European Commission published the EU Offshore Renewable Strategy along with an updated, non-binding, version of the 2011 Commission guidance on wind energy and Natura 2000 sites, with the aim to assist stakeholders (national authorities, market participants, NGOs) ensure, case-by-case, that the zoning and permitting procedures for wind energy projects (both onshore and offshore) are aligned with the provisions of the EU Birds and Habitats Directives as required also by the communicated EU Biodiversity Strategy for 2030. This revised guide provides relevant stakeholders with recent real-life examples of good practices as regards certain issues which arise from the Habitats and Birds Directive, such as the determination of significance of the "likely effects", scoping, setting baselines of information, and cumulative effects. For example, the guide provides examples where the co-locating of onshore wind RES sites with other RES types or with other economic activities, such as forestry, or even with nature conservation projects, proves to be beneficial.

As regards the Natura 2000 sites, more specifically, the new guidelines focus on highlighting mitigation measures (primarily, at the permitting stages of the wind project) for the so-called "appropriate assessment" of the project, aiming to minimize the harmful impacts of the development of the wind RES on nature habitats. To be noted, the findings of the "appropriate assessment" are not to be confused (nor diluted) with the separate assessment that takes place during the environmental licensing of the project, although these two procedures may be streamlined so as to avoid unnecessary overlapping. The guide foresees scheduling as a mitigation tool, whereby the project works are avoided during ecologically sensitive periods, and also gives examples where technology can assist in avoiding ecological damage (e.g. through the radar-assisted shutdown on demand of wind turbines).

Spatial planning issues are also considered in these guidelines. For example, the strategic impact assessment for the siting of wind farms should take into account not only feasibility or commercial viability issues, but also effects on species and habitats (macro-siting at a regional scale, with the use of onshore and maritime spatial plans). Indeed, appropriate siting of wind energy developments is assessed as the most effective solution for protecting protected species and habitats. A second-best solution is to arrange each individual wind RES project in such a way so as to disturb the habitats as less as possible (micro-siting at the project scale).

As regards offshore wind farms more specifically, their assessment is to take account also of effects on project-associated onshore habitats. Also, they are subject to the same legal principles that apply to onshore wind farms, e.g. the 'mitigation hierarchy', and during their spatial planning, cooperation may be needed between the MS and neighboring non-EU countries.

All in all, the insights provided in this guide will most likely prove to be of growing importance as the EU Biodiversity Strategy for 2030, which envisages the further expansion of the existing network of onshore and offshore habitats in Europe, their preservation and restoration as well as the strict protection of areas of very high biodiversity and climate importance, is implemented further. And this, at a time when further technological and regulatory developments regarding the offshore wind power production are anticipated.

# ALBANIA

## Market

### Approval of the Regulation on Integrity and Transparency of the Wholesale Energy Market

by *Blerita Topore (Tirana)*

On 21 December 2020, the Regulatory Agency for Energy (ERE) issued decision no 256 deciding the initiation of the procedure for the approval of the regulation on the integrity and transparency of the wholesale energy market. The Wholesale Energy Market Integrity and Transparency Regulation (REMIT) sets out criteria that prohibit abusive practices that may occur and affect wholesale energy markets. At the same time, REMIT helps in the proper functioning of these markets, taking into account their specific characteristics. REMIT will define in detail the manner and procedures to be followed by the ERE for monitoring the functioning of the wholesale energy market and certain activities of market participants in order to eliminate abuse through its development, promotion of competition and application of standards transparency.

## Oil & Gas

### Market Procedure for the approval of the Rules for the use of LNG terminal

by *Blerita Topore (Tirana)*

On 28 December 2020, the Regulatory Agency for Energy (ERE) issued Decision no.268 on initiation the procedure for the approval of the "Rules for the use of liquefied natural gas (LNG) terminal" in Albania. The rules regulate in particular the description of the liquefied natural gas terminal, the development, construction and maintenance of the terminal, the use of the terminal, the contractual relations and the general conditions of use of the terminal, the reservation and use of the Terminal Capacity, the metering rules and rules of distribution, publication of data and exchange of data, indemnification and rules of sale of LNG or natural gas of the Terminal User in an Open Procedure. These rules have been developed and implemented following the general principles of transparency, non-discrimination of Terminal Users, security and reliability of the Terminal, as well as the technical and economic efficiency of the use of the Terminal. These Rules will be applied by the Operator, the Terminal User, as well as other energy entities, e.g. gas market participants intending to become users of the Terminal. The draft Rules for the use of the liquefied natural gas (LNG) terminal will be consulted with the Operators in the Natural Gas sector as well as all Stakeholders.

## RES

### Tariff for Small RES for 2020

by *Blerita Topore (Tirana)*

On 28 December 2020 the Regulatory Agency for Energy (ERE) issued decision no. 271 on initiation of the procedure for the determination of the purchase price of electricity produced from small renewable sources from the sun, wind and from the biodegradable part of solid waste that utilizes industrial, urban and rural waste for 2020.

ERE has the obligation to determine the purchase price of electricity produced from small renewable sources from the sun with installed power up to 2 MW and wind with installed power up to 3MW in accordance with the methodology approved by the Council of Ministers. The methodology approved by DCM no. 27, dated 17 January 2018 sets out the criteria for calculating the price to be paid for an output unit as payment for the power produced, in order to achieve a certain financial return - or simply set the price that the project must win for MW/h , in order to achieve break-even or income equalize production costs.

ERE in support of the provisions of Law no. 7/2017 "On the promotion of the use of energy from renewable sources", as well as bylaws in force, based on the experience so far for the approval of producer prices with priority based on the aforementioned legislation. The Ministry of Infrastructure and Energy (MEI) has requested information regarding the entities for which the latter has issued (1) prior authorization, (2) final approval for the construction of works for the production of electricity from small renewable sources from the sun and wind; as well as small generators with renewable source from the biodegradable part of solid waste, which utilize industrial, urban and rural waste.

# BULGARIA

## Oil and Gas

### Bulgaria Introduces New Requirements for Natural Gas Traders

by *Apostolos Christakoudis (Sofia)*

On 9 December 2020 the public consultation regarding the Draft Ordinance for amendment and supplementation of Ordinance № 3 of 21.03.2013 for licensing of activities in the energy sector, pursuant to which the Energy and Water Regulatory Commission (EWRC) issues licenses for gas trade, expired. Subsequently it is expected that the Ordinance is adopted in the nearest future. The Draft Ordinance proposes the following amendments regarding the traders with natural gas:

Starting 1 October 2021, gas traders will be obliged to obtain license in order to trade in Bulgaria; They may submit to EWRC applications for issuing of the license for trade from 1 January 2021.

They will also have to add proof of collateral for their activity when issuing a license for trade in raw materials. The amount of the collateral should be equal to 1/24 of the annual turnover, but not less than BGN 150,000. For the first year of the licensing activity, data on the turnover from gas trade on the territory of Bulgaria will be used. The collateral may be used only for obligations related to gas trade, and the amount must be reimbursed within 20 working days. The business plan to be submitted with the application for the license should contain forecast information about the company's cash flows and estimated gas prices for the period of the business plan by years. The proposed changes also take into account the new obligations of the EWRC to monitor the activity of the wholesale energy market.

# BOSNIA & HERZEGOVINA

## Electricity

### Secretariat continues procedure against Bosnia and Herzegovina for non-unbundling of DSOs

by *Andriani Kandilieraki (Athens)*

On 11 November 2020, the Energy Community Secretariat (EnC) issued a Reasoned Opinion against Bosnia and Herzegovina regarding the state's failure to transpose and implement the requirements for legal and functional unbundling of electricity Distribution System Operators (DSOs) in accordance with the requirements of Article 26 of Directive 2009/72/EC. By virtue of the aforementioned Opinion the Secretariat proceeded with the next step in the dispute settlement procedure under Article 90 of the Energy Community Treaty.

In more detail, the case originated in January 2018, when the Secretariat addressed an opening letter to BiH taking the view that the state had failed: a) to transpose the requirements of Article 26 paragraph 2 litera (d) of Electricity Directive 2009/72/EC requiring the establishment of a compliance officer and program in the Federation of Bosnia and Herzegovina in line with the deadline of 1 January 2015 foreseen by the acquis; b) to transpose Article 26 of Directive 2009/72/EC on legal and functional unbundling of electricity distribution system operators in Republika Srpska in line with the same deadline; and c) to adopt, within the prescribed time limit, the national measures to ensure legal and functional unbundling of Elektroprivreda BiH d.d. Sarajevo, Elektroprivreda HZHB d.d Mostar and Elektroprivreda BiH d.d. Sarajevo in practise.

However until today and based on the Secretariat's knowledge, Bosnia and Herzegovina remains in a state of non-compliance with Article 26 of Electricity Directive 2009/72/EC since it has not remedied the concerns raised in the Secretariat's Opening Letter. Thus Bosnia and Herzegovina is now requested to rectify the issues of non-compliance with Energy Community law identified in the Reasoned Opinion within a time-limit of two months. Depending on the Government's reply, the Secretariat may submit the case to the Ministerial Council for a decision on compliance with Energy Community law.

## Oil and Gas

### Secretariat issues Opinion on the Unbundling of Gas Promet

by *Teodora Vulic (Belgrade)*

On 2 October 2020 the Energy Community Secretariat published its Opinion on the unbundling of the gas transmission system operator (TSO) Gas Promet in Bosnia and Herzegovina, as the first TSO to be unbundled in the country, requesting certain conditions to be implemented for the company to be certified accordingly. The Regulatory Commission of the Republika Srpska (RERS) intends to award Gas Promet a certificate of gas TSO in the Republika Srpska, although the State of Bosnia and Herzegovina (RERS is one of the two entities) there is no law on gas, which would regulate the certification of transport companies. The Secretariat supports the certification of the Gas Promet, subject to the several conditions to be reflected by the RERS in the final decision, such as that RERS: explicitly specify the section of the pipeline for which the certificate is issued (Šepak-Karakaj and Karakaj-Zvornik); assess the capacity of Gas Promet to carry out the tasks of a TSO as described in Article 13 of the Gas Directive and verification whether Gas Promet disposes of the staff, technical and financial resources necessary to perform such tasks, and in particular whether and how the staff covers the tasks referred to in Article 13 of the Gas Directive; whether and to which provider any services are being outsourced, whether in case of outsourcing Gas Promet effectively monitors the service provider, and whether any service provider meets the unbundling requirements; request that outsourcing gas pressure control is based on an arm's length contract and that Gas Promet exercise appropriate control and monitoring; assess whether Republika Srpska and/or Srbijagas exercise control over Gas Promet in line with the criteria set out by the Secretariat and whether and which guarantees are in place to ensure structural separation within the Government; require that Srbijagas limit its shareholding rights in Gas Promet to passive financial rights; and require the replacement of Mr Djukic from the Board of Directors of Gas Promet.

## GREECE

### Electricity

#### Guarantees Manual for the Electricity Transmission System Operation Code

by Sofia Getimi (Athens)

On 15 October 2020, the Regulatory Authority for Energy (RAE) issued the Decision n. 1426/2020 - 'Guarantees Manual' for the Electricity Transmission System Operation Code. According to the provisions of subsection 11.3 of the Code, all persons who are registered in the Register of the Electricity Transmission System Operator (TSO) must provide sufficient guarantees during the whole duration of the Power Transmission Operator Transactions Contract for the fulfilment of their obligations under the Contract. The provision of a guarantee is a precondition for the validity of the Contract. The obligation to provide guarantees is fulfilled, either by submitting a letter of guarantee or by depositing an amount in a designated account of the TSO.

The calculation of the amount of guarantee to be provided, is conducted both on a yearly and on a monthly basis. The TSO calculates each September the amounts of guarantee to be provided on a yearly basis, according to the formula which is analytically explained in the decision. The calculation of the payable guarantee is also conducted on a monthly basis, according to a different formula. If the result of the monthly calculation exceeds the amount of guarantee that has been already provided according to the yearly calculation by 20%, further guarantees should be provided within 10 days, upon notification.

The minimum amount of guarantee to be provided by the suppliers and the self-supplying customers is €20.000 and the minimum amount to be provided by traders is €10.000.

Penalty fees also apply in case of non-compliance with the obligation to provide a guarantee within the prescribed time frame, equal to the 1/1000 of the amount due for each day of non-compliance with a minimum penalty of €1000 per day.

#### Greece: Amendment of Legal Framework for DEPA, HEDNO and LARCO Privatisations

by Konstantinos Ntallas (Athens)

On 15 October 2020, the amendment introducing regulations for the privatization procedures of General mining and metallurgic company LARCO, Public Gas Corporation - DEPA and Hellenic Electricity Distribution Operator - HEDNO was accepted by the Greek Parliament and it was included in Law 4736/2020 (OJ A' 200/20.10.2020). Regarding DEPA, according to the provisions of Law 4001/2011, a general ban on the transfer of shares issued by DEPA INFRASTRUCTURE has been imposed for a period of five years. The amendment clarifies the cases where the transfer of the shares issued by DEPA INFRASTRUCTURE to a third party is permitted for the purpose of removing disputes regarding the interpretation of the provisions. Regarding HEDNO, the amendment provides for the possibility for RAE to issue a decision for the approval of the new methodology for calculating the Required Revenue of the Hellenic Electricity Distribution Network (HEDNO) until 31.10.2020, and to apply the decision immediately in order to issue the Distribution Regulation Decision by 31.03.2021 and to issue the parameters related to the return on capital to by 31.12.2020. Regarding LARCO, the amendment provides, for reasons of both legal certainty and acceleration of the procedures for the sale of the assets of LARCO, for the resolution of procedural issues necessary for the conduct of tenders, as they relate to deadlines for the

start of tenders, the minimum content of notices for the sale of LARCO assets, deadlines for the publication of the final notice of creditors, completion of the framework of cooperation and coordination etc.

### Acceleration of the granting of permanent connection offer to RES stations

by Pavlos Ioannis Kasselakis (Athens)

On 23 December 2020, ministerial decision no. 5693/2020 was published in the Official Journal B' 5693/2020. Among other, this decision introduces several amendments to ministerial decision YPEN/DAPEEK/28857/1083/17.03.2020, which concerns the determination of a special framework of priority to the granting of permanent connection offers to RES and HP CHP plants by the Electricity Network Operator (DEDDHE).

In light of the new provisions introduced, DEDDHE enlists the applications for the granting of binding offer for connection to the network in order of priority, independently for each Region of the Network, except in case of saturated networks, where the applications shall be accepted only if there are some spare capacities for RES and HP CHP plants, in compliance with the respective Regulatory Agency for Energy (RAE) decision on proclaiming of such section of the network saturated. In addition, given that certain conditions are met, the Network Operator may grant a binding offer for the connection to the network to a station of lower priority at the same time with a station of higher priority. To that cause, the connection of the station of lower priority must either take place in a HV/MV Substation (new or existing), which does not serve distribution lines (and loads) of the local network, or take place in a Private HV/MV Substation (new or existing) under the meaning of RAE decision no. 787/2012, or finally, take place in a new HV/MV Substation of DEDDHE, under the meaning of RAE decision no. 787/2012, according to the procedure laid down in par. 3.1 of the aforementioned decision.

Furthermore, a fundamental amendment regarding the examination procedure is thoroughly introduced. More precisely, in case it is deemed impossible to connect the station to the Network, the competent Operator keeps the application pending for five (5) years, commencing on the date of the submission. This, however, presupposes a formal request from the interested party, addressed to the Operator, within the period of one (1) month from the notification of the inability to connect. Additionally, the Operator must also receive a written statement from the interested party, and on an annual basis, regarding the maintenance of its application. It must also be noted that, in case the Operator ascertains the evident inability to connect to the Network, it automatically issues a negative opinion as to the application, without carrying out a technical examination, and regardless of the aforementioned order of priority for the examination of applications. On the other hand, given that the connection of the station is possible, the competent Operator grants the binding offer for connection to the Network to the interested party, based on the order of priority of the initial application. To conclude, the ratio of this new legislative tool is orientated towards the fast evaluation of the pending applications, as well as the simplification of the relevant procedure as a whole. Eventually, this is in order to promote the full utilization of the available electrical space of the Network by new RES producers.

## Oil and Gas

### Amendments of the Gas Supply Code Regarding Vulnerable Gas Customers

by Sofia Getimi (Athens)

On 30 November 2020 the Minister of Environment and Energy issued decision n. YΠEN/ΔΥΔΡ/101847/2440 (OJ. B' 4794/30.10.2020) amending the Gas Supply Code (Ministerial decision 174842/2018) with the aim to strengthen the protection framework of vulnerable gas customers. Vulnerable Gas Customers include people belonging to low income groups, the elderly and people with health problems who are dependant to a large extent on the continuous and uninterrupted supply of energy.

More specifically, the above decision provides, among others, that the deadline for terminating the Supply Contract of vulnerable customers is increased by 30 additional days and the time period available to vulnerable customers for paying each consumption bill cannot be less than 40 days. In case of out-of-court settlement of debt, no advance payment will be required by vulnerable customers and the amount of the monthly instalment payable under said settlement should not exceed the 40% of the corresponding monthly gas bill, and not the 50% of the bill as previously applicable. Moreover, gas suppliers cannot terminate the Supply Contract or cut-off the supply of vulnerable customers during the months November-March. Finally, gas suppliers are not entitled to cut off energy supply in cases of vulnerable customers who require mechanical support, as well as those with serious health problems. Gas Suppliers may terminate the Supply Contract of such vulnerable customers only when the customer is in arrears for six consecutive months and a notice has been sent to him informing of the possibility to enter into an out-of-court settlement of debt.

## RES

### Fiscal and Structural Changes Introduced to the Greek RES Market

by Maria Ioannou (Athens)

In November 2020, the Greek Ministry of Environment and Energy announced the adoption of fiscal and structural measures aiming, on the one hand, to secure the adequacy of funds on the Special Account for financing the RES projects operating in Greece and, on the other hand, to ensure the gradual adaptation of the RES industry to the recently launched operation of the Electricity Target Model.

Indeed, the current economic situation (including, implications of the coronavirus) reflects negatively on the financial viability of the Special Account established by virtue of Article 143 of Law 4001/2011 to finance RES projects, which saw in 2020 a deficit of approximately €290 m. and is therefore deemed to be in need of regulatory intervention in order to secure financial flows towards RES producers without burdening excessively certain market participants in favor of others. For this reason, a Ministerial Decision (OJ B' 5901/31.12.2020) has already been issued by the Minister of Environment and Energy, according to which, as regards year 2020, 78 % (instead of 65%) of the revenue generated from the auctioning of greenhouse emission allowances will be directed to the financing of said Special Account.

Further financing of the Special Account is to take place through:

- i) the on-off fee paid for this purpose by applicants for RES production certificates according to Article 17 of law 4685/2020 (OJ A' 92/7.5.2020);
- ii) a one-off contribution amounting to 6% of the annual turnover for 2020, imposed by virtue of Article 157 of law 4759/2020 (OJ A' 245/9.12.2020) upon all types of RES producers operating under a FiT scheme prior to 31.12.2015;
- iii) a one-off fee in the amount of 2.00 €/MWh imposed by virtue of Article 157 of law 4759/2020 upon electricity providers (total amount burdening the providers shall be equal to the total amount paid by the RES producers according to point (ii));
- iv) a special green tax of 30 €/kL imposed by virtue of Article 158 of law 4759/2020 starting 2021 upon diesel fuel;
- v) estimated cutbacks on other imposed fees due to the gradual connection of the Greek islands to the national grid;
- vi) transitional financing from the EU Recovery Plan (pending approval); and
- vii) fees paid by high and medium-voltage consumers (possibly with the exception of the hotel industry).

As regards, now, the adaptation of the RES industry to the recently launched operation of the Electricity Target Model, of particular importance is the expected extension up to 2024 of the competitive procedures for the granting of operational aid, whereby six joint solar and wind competitive rounds are planned (350MW auctioned per round). In this respect, it is important to know that according to Article 159 of law 4759/2020, starting 2021 and until the Minister of Environment and Energy issues the relevant decision on the competitive procedures, the signing of operational aid agreements (among other, for wind RES plants with a capacity exceeding 3MW, and for solar PV plants with a capacity exceeding 500kW) is temporarily frozen. An exception, however, is provided among other for plants already eligible through competitive procedures, or which have accepted the granted connection terms by 31.12.2020.

New RES projects (or RES projects pending environmental licensing on 31.12.2020) applying for grid connection terms from 1.1.2021 onwards, are to receive operational aid only through participation in the competitive procedures. In any case, starting 2022, solar PV projects, in particular, are not to receive operational aid unless through participation in the competitive procedures or unless they concern the deployment of PVs on buildings.

Law 4759/2020 also increases the maximum capacity of RES plants from 1 MW to 3 MW for the purposes of net and virtual net metering.

The structural reform introduced through this law also concerns RES projects that are given the status of Strategic Investments, whereby, unless they use innovative technologies, they shall no longer be treated with priority as regards their connection to the grid. Changes are also anticipated for the so-called "small PVs" (i.e. PV plants with a capacity not exceeding 500kW), whereby starting 2021 and until 2024 they, too, shall be receiving operating aid only through (additional) competitive procedures. For pending applications for connection to the grid, the deadline to sign the PPA for obtaining a reference price under the previous regime is 31.12.2021.

As regards RES projects of energy communities, these may henceforth continue to obtain operational aid without participating in competitive procedures only if the project has a capacity not exceeding 18MW and members of the energy community are municipalities or prefectures or if the community has more than 60 members (whereby at least 50 of them are natural persons).

Last but not least, the Ministry is also launching the procedure for the revision of the country's Spatial Plan for RES projects. This is deemed necessary since the previous Spatial Plan of 2009 does not take full account of the technological advancements as concerns various RES technologies nor of the needs of the environmentally sensitive areas, such as the small islands. The new Spatial Plan is not to be anticipated earlier than Q3 2021.

## New Spatial and Urban Planning Law Affects the Onshore and Offshore RES Projects

by Maria Ioannou (Athens)

In December 2020, law 4759/ 2020 on Modernisation of Spatial and Urban Planning Legislation and Other Provisions (OJ A' 245 / 9.12.2020) was enacted. As regards RES projects in particular, the implications of this new law are twofold, as it comprises provisions modifying the legal framework for the development and financing of RES projects as well as provisions affecting the siting of such in Greece.

Focusing especially on the latter, the new law amends the provisions of law 4447/2016 (OJ A' 241/23.12.2016) on spatial planning by introducing mechanisms expediting and streamlining the procedures regarding the forward-planning of the siting of all types of activities in Greece, whether onshore or offshore, based on the anticipated impact of their interactions on society, the economy and the environment.

Under the new law, the spatial planning instruments remain those of a nation-wide, regional, local and special nature as per previous law 4447/2016. The drafting of the National Spatial Strategy has a more declaratory and strategic nature, whereas the rest of the aforementioned instruments shall be designed so as to specify and implement these strategic goals. As concerns the energy sector, the Regional Spatial Framework shall contain the guidelines for its sustainable development in the country's regions, whereby the RES sector shall have a predominant role. The law also maintains the previous provisions of law 4447/2016 envisaging -among other- the implementation nationwide of a Special Framework for the spatial planning regarding the siting of RES projects. This Special Framework may amend the local urban plans at any point in time, given there is such a need. As a rule, the opposite shall not apply. In this respect, it is noted that the Ministry of Environment and Energy is currently launching the procedure for the revision of the 2009 Special Framework for the Spatial Planning for RES Projects to take account of the recent technological advancements in the RES industry and to safeguard environmentally sensitive areas, such as the small islands.

More importantly, however, the new law also envisages the drawing up of a nation-wide Maritime (Offshore) Strategy and of the respective Maritime Spatial Frameworks (which shall constitute a form of regional planning). Indeed, the law lays out the objectives for planning the siting of maritime activities; mainly, the sustainable development of the maritime conventional energy and RES sector -with a view also to secure the energy supply of the Greek islands, the development of maritime transport and aquaculture activities as well as the protection and improvement of the maritime environment, including achievement resilience to climate change impacts. Regarding the hierarchy of the various planning instruments, the law provides that unless otherwise regulated, the Maritime Spatial Frameworks shall comply with the directions and provisions of the Special Spatial Frameworks in place (e.g. the one concerning the development of RES projects in Greece), as well as with the objectives and provisions of the EU Maritime Strategy.

It is useful to highlight the intention of the new law to disassociate the offshore spatial planning from that of onshore coastal areas, thus aligning the existing relevant Greek legal framework (law 4546/2018) with the EU Directive 2014/89 on maritime spatial planning, further to avoiding their overlapping with the rest of the onshore spatial planning instruments.

The law also prescribes the procedure for the approval (including public consultation), revision and amendment of the National Maritime Strategy as well as the Maritime Spatial Frameworks. As a rule, the approval of the Maritime Spatial Frameworks is subject to a Strategic Environmental Assessment and public consultation, and they are to have duration of five years. However, as already noted, they may be amended following the amendment of a Special Spatial Framework.

As regards the drafting and issuing of the initial Greek National Maritime Strategy and Maritime Spatial Frameworks, the provisions of the onshore spatial plans are to be taken into account and special provisions shall apply in case the latter is in conflict with the objectives of the EU Directive 2014/89 on maritime spatial planning.

## Greece: Stricter Conditions for Obtaining the Status of Strategic Investment for RES Projects

by Mira Todorovic Symeonides (Athens)

On 9 December 2020 the law no. 4759/2020 (OJ A' 245/2020) amended the conditions for the approval and narrowed down the RES projects which may be accepted as strategic investments by Enterprise Greece SA. Particularly article 161 of this law, which amends article 10 of the law no 4608/2019 on Strategic Investments, specifies that from now on the investments in RES projects may not be approved as strategic investments unless they are either:

- Investments of not less than €50 million in projects which apply technological innovations for production of electricity from RES and have a common connection point to the grid; or
- Investments of not less than €100 million and a common connection point to the grid. However, the projects which do not apply technological innovations, even when they are, as projects of strategic interest, included in the fast track licensing procedures, shall not be given priority regarding their application for connection to the grid.

Applications already submitted to Enterprise Greece SA may be assessed according to the legal regime applicable at the time of their filing, however, also in these cases the projects shall not be given priority for connection to the grid.

On the other hand, the use of the following technologies will be considered as innovation within the context of an application for the acquiring of the status of a RES strategic investment:

- Electricity storage system;
- Production of “green” hydrogen;
- Installation of off-shore wind parks (bottom fixed wind turbines and floating off-shore wind turbines);
- RES projects which connect electricity networks to the national grid through submarine cables;
- RES projects with fully controlled production i.e. which use biomass, biogas, geothermal energy; as well as PV thermal plants and HP CHP plants;
- Hybrid RES production units on the Non-Interconnected Islands.

It should be noted that there is still no legal framework for the RES with storage system, the off-shore wind parks and production of hydrogen, although for the first two, it has been announced that the respective legal provisions will be enacted in 2021.

### Declaration of Readiness for the Connection of a RES Station to the Network

*by Pavlos-Ioannis Kasselakis (Athens)*

On 20 October 2020, law no. 4736/2020 concerning the reduction of the impact of certain plastic products on the environment was published in the Official Government Gazette (OJ A' 200/2020). According to article 20 of the aforementioned law, a new article (i.e. article 4A) is added to law no. 4416/2016 (OJ A' 149/2016), regarding the declaration of readiness for the connection of a RES station to the network or the system.

In light of the new provisions introduced, the holder of a RES station having completed its installation is obligated to submit before the competent system or network operator a declaration of readiness. The aforementioned declaration is a prerequisite in order for the plant to be connected to the distribution network or transmission system, whereas, in case the installation project has not been yet completed, the determination of the Reference Prices is dependant upon the date of submission of the declaration (not the date of – regular or trial – operation of the station). It must be noted that the completion of the installation project is defined as the completion of all the necessary tasks for the operation of the station, from which certain features may be excluded (such as telecommunications equipment and surveillance systems).

Additionally, the interested party may also submit the concluded operating aid contract, the mandatory license based on the urban planning legislation, the concluded connection contract, as well as the declaration of a suitable engineer, accompanied by an on-sight report. The newly introduced provisions also mention the mandatory elements of that report (e.g., photographic documentation), whilst, among others, certain conditions, regarding the qualifications of the engineer, the method of selection and payment, are thoroughly set.

Following the submission of the declaration of readiness, the competent Administrator examines, within five days, whether the connection of the station is possible. It should be pointed out that if the connection is deemed possible, it is compulsory for it to take place within fifteen days at the latest. In case this is not possible, and given that the interested party has submitted all the relevant documents mentioned above, the Administrator issues a certificate for the completion of the project. This certificate also proves the date of submission of the declaration of readiness and it is further notified to DAPEEP or DEDDHE, whereas, if the statement regarding the completion of the project is found to be false, the confirmation for the completion is recalled.

To conclude, the new legislative instrument explicitly mentions that it is also applicable to stations selected for inclusion in a support scheme, in the form of operational aid through a competitive bidding procedure, under article 7 (law no. 4414/2016).

### New Licensing Code Regulating RES Production Certificates

*by Mira Todorovic Symeonides (Athens)*

On 1 December 2020, the new Licensing Code regulating RES Production Certificates was published in the Official Journal (B' 5291/2020), aiming at implementing the new RES licensing procedure as regulated by law 4685/2020 (OJ A' 92/07.05.2020). The Code was published on the day when the first submission round for issuing of these certificates started. This last-minute regulation caused uncertainty to the interested applicants regarding the application procedure and documents, and an urgency to collect the necessary documents, which was partially mitigated by a previous public consultation of the Draft Code and the extension of the duration of the submission round by 10 days; it lasted from 1 until 21 December 2020.

The Code regulates conditions and procedure for the electronic submission of applications for issuing of Production Certificates (for RES and HP CHP plants other than Special Projects) and Production Certificates for Special Projects (such as hybrid, off-shore wind, HP CHP above 35 MW, geothermal energy, RES plants that are connected to the Interconnected System through submarine cables). Applications for issuing of these certificates as well as for their amendments are submitted via an electronic form, through the platform established for this purpose.

The conditions for issuing of the certificates include:

- that there is no overlapping of land plots in two or more applications which partly or completely prevent the implementation and operation of such plants. Unless one project has priority (such as in case of projects of strategic interest or projects held by energy communities) RAE will first instruct the applicants to find the solution themselves (such as by introducing other land plots for the overlapping part of a project, or reducing diameter of blades in case of wind generators, or reducing the project's capacity) within 30 days; if no solution is found, RAE will communicate the local authority regarding the possibility of extending the maximum installation capacity for wind generators in its territory in compliance with the Special Framework for Spatial Planning and Sustainable Development. If this solution is not applicable, RAE will proceed with the comparative assessment of the two applications by applying the following criteria: in regards to private land plots (including municipality land) or partly private and partly public land plots, RAE will prefer the applicant which has secured the legal titles (ownership, lease, usufruct) on such land plots and has provided, within 10 days, all the necessary evidence of titles for the whole project (public notary agreements, court decisions, extract from registers etc); if the applications are still equivalent, preferred would be the one for which the applicant submits a solemn declaration that the project will not receive any operational state aid; for still equivalent applications, preferred would be the application that concerns the issuance of a Production Certificate for Special Projects; the next criterion is the financial strength of the applicants; in regards to small HPPs next is the criterion of maturity of the project; the subsequent criterion for Special Projects is the level of energy efficiency. Finally, if there is no agreement and the above assessment does not lead to a preferred applicant, both applications are to be rejected.

- that the shareholders of an applicant - legal person are disclosed all the way up to the ultimate beneficiary – individual; This requirement does not apply to companies listed in stock exchange and investment funds;

- In case of Special Projects, RAE will assess the energy efficiency of the project; its financial technical efficiency and feasibility; and the technical and financial strength of the applicants to implement the project and to secure for the financing of the project;

Some other specifics of this code are the following provisions:

- Regarding the rights of the owners or the usufructaries of land plots for which a production certificate has been issue to another applicant: Such owner or usufructary may, not later than in the next submission round following that of the issuing of the production certificate concerning his land plots, submit an application for the issuing of production certificate for a plant to be constructed on the disputed land plots and prove that he has the legal right on these land plots. Subsequently, the previous production certificate will be annulled, subject to a payment on his behalf of the RAE administrative fees for issuing of the production certificate. The new production certificate would, at the request of the applicant, be issued either to him (the owner / usufructary of the land plots) or to an individual or legal entity to which he has leased the land plots with a public notary act having a duration of at least 4 years;

- Regarding the saturated grids: the electricity system and network operators should every year, until 30 September, propose to RAE to declare that certain parts of the electricity system or network are saturated; following a public consultation, RAE should by 30 November each year decide which parts of the system or network are saturated and assess the maximum new capacities, determined per RES technology, which may be absorbed by the system or network. RAE may further regulate that it will not accept any new applications for the issuing of production certificates, or that the number of applications for issuing of production certificates or for issuing of the binding offers will be limited.

- It will be possible to renew the issued production certificates upon their expiration, but such renewal will be subject to certain conditions, and is gradual - for 5 years each time, and up to a total of 25 years ;

- A new possibility is that of dividind one plant into several plants belonging to the same certificate holder, who will then be granted a respective amendment of the initial production certificate; and

- Also, it will be possible to merge several production certificates and/or production licenses of one holder, if all the plants are connected to the grid at the same point and if all of them are approximately at the same stage of the licensing procedure.

## Regulating RES storage in Greece

by Mira Todorovic Symeonides (Athens)

On 8 December 2020, the Ministry of Environment and Energy issued a decision (OJ B' 5619/2020) on the formation of a working group which will prepare a proposal for the Ministry for "Adopting the legal framework for the development and participation of electricity storage units in the Electricity Markets of the law 4425/2016 (regulating the Energy Exchange) as amended, and the Capacity Mechanism". This is an important step necessary for securing the supply of electricity in Greece and particularly for ensuring the participation of storage units and RES plants with storage units in the Electricity Markets of the Energy Exchange and in the Capacity Mechanisms.

The Proposal should be submitted to the Ministry until 15 May 2021 and should address the following issues:

- Framework for licensing and participation in the Electricity Markets of the Interconnected System, of electricity storage units with an independent connection point to the grid ("storage before the meter") or as part of a portfolio of other RES units for the joint participation in the market;
- Framework for licensing, operation and participation in the Electricity Markets of the storage units situated within the production or consumption plant ("storage behind the meter"); and
- Framework for licensing and operation of storage units on the Non-Interconnected Islands.

The storage regulation should aim to enable and regulate particularly the following: the participation of the storage units in the electricity markets as independent participants or through representatives; their connection to the grid and use of the grid; their participation in any future capacity mechanism; installation and efficient exploitation of dispersed units in producer or consumer or self-consumer plants or equipment; harmonisation of the Greek regulatory framework with the EU acquis and practices of other EU countries; etc.

The Decision further appoints the members of the working group and provides for the possibility that they invite representatives of other authorities, organisations, associations or experts in financial, technical sciences or in other relevant subjects to participate in the working group or to provide an opinion.

### New Cycle of Competitive Procedures for Operational Support

*by Kosmas Karanikolas (Athens)*

On 7 January 2021, the Greek Regulatory Authority for Energy (RAE) announced the commencement of the competitive procedure for determining the reference price for RES projects operational support. This new cycle was launched by the RAE's decision no. 1648/2020 dated 28.12.2020 (OJ B' 5760/2020) on a joint competitive bidding procedure on the selection of the photovoltaic and wind plants that would be included in the operation support scheme. The applications for participation in the auctions may be submitted from 07 January 2021 until 22 March 2021. The relevant online auction is scheduled for 24 May 2021.

The joint competitive bidding procedure involves photovoltaic stations with an installed capacity of less than or equal to 20 MW (PPV  $\leq$  20 MW), as well as wind farms with a maximum production capacity of less than or equal to 50 MW (PWIND  $\leq$  50 MW), while the maximum auctioned power is set at 350 MW. The initial reference price corresponds to the maximum allowed bid price which is set at 53,86 € /MWh. The competition percentage is set at 100%, meaning that, in order to auction the maximum power of 350 MW provided for in the tender invitation, the submitted offers must cumulatively equate to 700 MW.

## MONTENEGRO

### Energy

#### Montenegro announces ban on small hydropower plant construction

*by Vuk Stankovic (Belgrade)*

On 3 December 2020, the Prime Minister of Montenegro presented to the National Assembly the Government's programme regarding energy, energy efficiency, economy and ecology. The Programme focuses on protection of the natural resources and rivers and in that respect The Prime Minister announced that in forthcoming period a regulation will be adopted to ban new small hydropower plant projects. He further underlined that Investing in environmental protection, reducing greenhouse gas emissions and adapting to climate change, together with appropriate measures to promote social inclusion, should be understood as a driver of green and sustainable development. The Energy Community Secretariat reacted on these official statements pointing out that proper transposition, implementation and enforcement of environmental assessment legislation under the acquis and in line with Policy Guidelines on small hydropower projects in the Energy Community are essential. The Secretariat supports all endeavors towards this key priority.

## NORTH MACEDONIA

# Market

## Draft National Energy and Climate Plan

by *Simonida Shosholcheva Giannitsakis Zafirovic (Skopje)*

On 20 November 2020 the Energy Community Secretariat issued 48 recommendations on the Draft National Energy and Climate Plan of North Macedonia. To attain their long-term energy and climate policy objectives and promote transparency and investor certainty, the Energy Community Contracting Parties committed to adopting integrated National Energy and Climate Plans (NECPs). The plans have to address all five dimensions of the Energy Union (energy efficiency, renewables, greenhouse gas emissions reduction, interconnections and research and innovation) as foreseen by the Governance Regulation, and streamline administrative and reporting procedures.

North Macedonia is the first Contracting Party to finalize its Draft NECP and submit it to the Secretariat for official review. The Draft NECP defines the general targets, namely an 82% greenhouse gas (GHG) net emissions reduction relative to 1990 levels by 2030, a 20.8% savings of final energy consumption and 34.5% savings of primary energy consumption relative to the business as usual (BAU) scenario, and a 38% share of renewable sources in gross final energy consumption by 2030, and also the plan for gradual decommissioning of the existing coal power plants and accelerating the utilization of renewable sources in the electricity generation mix in conjunction with energy efficiency measures in all sectors.

As required by the Ministerial Council Recommendation 2018/01/MC-EnC, the Secretariat issued its assessment of the Draft NECP of North Macedonia. The Secretariat commends the achievements of North Macedonia in setting up and conducting a robust drafting process for the NECP. The Secretariat concluded that the draft provides a solid basis for the development of an ambitious final NECP, but at the same time highlighted several areas which require further improvement so that the final NECP can reach its full transformative potential.

# Electricity

## Increases in Regulated Prices and Tariffs for Consumers and Power Suppliers

by *Simonida Shosholcheva Giannitsakis Zafirovic (Skopje)*

On 31 July 2020, the Regulatory Commission for Energy and Water Services of the Republic of Northern Macedonia adopted a decision UP1 no. 08-59/20 approving the regulated maximum income and prices for the supply of electricity to consumers supplied by the universal supplier EVN HOME DOO Skopje.

In accordance with this decision, the prices of accrual elements on the basis of which the consumers pay for the electricity supplied as determined as follows:

For consumers at the 35 kV level and consumers at 6kV, 10 (20) kV level (high voltage consumers), the price of electricity increases by 7.42 percent

For consumers at the 0.4 kV (380 / 220V) level, the price of electricity increases also by 7.42 percent, following the decision of the Regulatory Commission for Energy and Water Services.

Thus, one kilowatt of energy, will cost 5.9 (instead of 5.54) denars for high voltage consumers, and 2.9 (instead of 2.78) denars for a low voltage consumers. To be noted, that these changes refer only to electricity consumed, whereas charges for street lights remain unchanged, constituting a fixed cost in the electricity bill. The decision applies to prices starting from the application of this decision until June 30, 2021. The previous Decision approving the regulated maximum income and prices of the accrual elements for the supply of electricity to consumers was issued on June 28, 2019, whereas the last adopted Decision approving an increase of the price of electricity for households was issued on June 30, 2017. The increase of electricity prices was demanded by all power suppliers due to the financial issues that these face due to decreased revenues caused by the reduced economic activity during the COVID-19 crisis.

On the same date, the Regulatory Commission also adopted a decision UP1 no.08-84/20 approving the regulated maximum income, average tariff and tariffs for the transmission of energy by the Transmission Operator, AD MEPSO Skopje. Also these tariffs shall apply starting from the beginning of the application of this decision until 30 June 2021. According to this decision, the tariffs on the basis of which AD MEPSO Skopje invoices the use of the electricity transmission system, are:

Top active power (den / kW) - 9,5589 (instead of 2,7940, as per the previous decision of 28 June 2019)

Active electricity (den / kWh) - 0,1757 (instead of 0,1704, as per the previous decision of 28 June 2019)

Reactive electricity (den / kVarh) - 0,0703 (instead of 0,0682, as per the previous decision of 28 June 2019).

# SERBIA

## Electricity

### Tender for the Appointment of the Supplier of Last Resort

*by Vuk Stankovic (Belgrade)*

On 22 October 2020, the Ministry of Mining and Energy rendered its Decision launching the public tender for the selection of the suppliers of last resort, who will for the next two years provide electricity to end users that are not entitled to guaranteed supply. According to the Decision, the right to participate in the tender is given to all domestic legal entities or entrepreneurs who meet the requirements as mentioned in the Tender documents. The participants have to meet financial and administrative conditions and to have valid licence for electricity supply issued by Serbian Regulatory Agency. The criterion for selecting the most favourable candidate is the lowest price. The selected supplier, who will perform the spare supply of electricity, will conclude the agreement on the sale of electricity with full supply with the end user, based on the elements of the agreement contained in the Tender documentation.

### EMS Connected to the European AIB Hub

*by Vuk Stankovic (Belgrade)*

On 14 November 2020, Public Corporation Electricity Grid of Serbia - JSC EMS, the Serbian Transmission System Operator, was registered as member at the European Association of Issuing Bodies (AIB) Hub. The purpose of the AIB is to develop, use and promote a standardised system: the European Energy Certificate System - EECS. It operates the inter-registry communications Hub and is the central point for transferring certificates between registers. This registration will ensure that guarantees of origin produced in Serbia can be exported to other registers in 25 countries over the European region, while also ensuring the possibility to import guarantees of origin from those European registers to Serbia. Pursuant to the JSC EMS, AIB's members are deemed to be the competent bodies for the administration of Guarantee of Origin schemes in 25 countries (EU, EEA and Energy Community member states), whereas three more countries are expected to join by the end of 2020.

# ROMANIA

## Oil and Gas

### National Program for Connection to the Intelligent Natural Gas Distribution System

*by Raluca Draghici (Bucharest)*

On 26 October 2020, the Romanian Government adopted Emergency Ordinance n. 128 regarding certain measures for the establishment of a National Program for connecting the household consumers and the commercial customers to the intelligent natural gas distribution system.

The intelligent natural gas distribution system is defined as the natural gas distribution system consisting of fittings, installations, connections, as well as other components connecting the measurement-delivery stations of the National Gas Transmission System to the measurement stations of the consumers including smart gas meters, which apply at least one of the following:

- a) use of smart instruments in the field of pressure and flow measurement, metering, internal inspection of natural gas distribution pipelines, odorization, cathodic protection, filtration and, as the case may be, natural gas drying, heating, traceability of natural gas distribution system, but also automatic collection, processing and transmission of remote data, in order for the natural gas distribution system to operate in conditions of efficiency and safety;
- b) the use of IT technologies and integrated artificial intelligence allowing the integration of participants' activities to the natural gas market in the processes of collecting and transmitting data, distribution, pipeline storage and natural gas use through the active participation of system users to increase the efficiency of the smart distribution of natural gas; or
- c) the use of technologies to ensure an increased reliability of the natural gas supply, the continuous, safe and cost-effective access to natural gas, as well as technical capacities to offer customers new services that optimize natural gas consumption.

Thus, the Ordinance established the National Program for connecting customers to the intelligent natural gas distribution system (hereinafter, the "National Program"), which has as a general objective the reduction of emissions due to the use of solid fuel for the heating of residential buildings, water and food preparation, as well as to improve the quality of the public heat supply service and promote the use of natural gas in production processes or commercial activities. Besides that, the National Program also aims at: a) increasing the living standards by ensuring high quality public services; b) ensuring access to the public natural gas distribution service in a transparent and non-discriminatory manner; c) ensuring high quality public services for the supply of thermal energy intended for commercial customers; d) ensuring the use of natural gas in production processes in order to increase competitiveness;

e) ensuring high quality public services for thermal energy supply for educational units, medical units, as well as other public institutions.

The National Program finances projects pertaining to the establishment and extension of the intelligent natural gas distribution networks for the connection of domestic consumers and non-household customers, provided that the intelligent distribution network is public property of the administrative-territorial units (hereinafter, ATU). The following categories of beneficiaries are eligible under the National Program: a) the ATU; b) partnerships established by local public authorities; and c) inter-community development associations. In order to be eligible under the National Program, projects shall be in accordance with the applicable European and national legislation (especially, as regards state aid); ensure the contribution to the achievement of the specific objectives of the operational program; and be included in the investment priorities of the operational program from which the financing is to be ensured;

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