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EU and EnC

Market

Compliance with EU Law in 2018 Report

by Kosmas Karanikolas (Athens)

On 4 July 2019, the European Commission issued its annual report regarding Member States' compliance with EU law during 2018 as well as the measures employed by the Commission to thrust its enforcement. It may be reminded that since 1984, the Commission presents the aforementioned Annual report on monitoring the application of EU law to the European Parliament, which subsequently adopts it, in the form of a resolution. Proceedings against Member States for infringement of EU law are initiated only insofar their voluntary conformation is proven unattainable. Commission's evaluation of Member States' performance on the application of EU law concentrates on three elements; (a.) whether Member States have transposed EU secondary legislation, i.e. Directives, in their national legal order, (b.) whether such transposition has been enacted timely and (c.) whether the harmonization of national laws with EU legislation is correct and, further, properly enforced.

In 2018, the main policy areas in which the Commission ascertained violation of EU rules and initiated proceedings against the Member States that erred included internal market, industry and entrepreneurship, mobility and transport, protection of the environment (e.g. implementation of the restrictions on emissions set out by the Air Quality Directive) and other socio-economic issues. It must be noted that, in spite of the minor increase in the pending infringement cases in 2018 (1571 compared to 1559 in 2017), this figure remains significantly lower than the peak of 2016 (1657 unsettled infringement cases). As far as performances per each Member State are concerned, the report suggests that Cyprus, Belgium and Spain were numbered among the countries that offended transposition deadlines most frequently, while Estonia had the lowest total number of open infringement cases last year. Finally, in nine occasions the Commission considered the measures undertaken by several countries to rectify the found incompatibilities with EU law rather unsatisfactory and, as a matter of fact, it referred 5 Member States to ECJ requesting the imposition of financial penalties.

Furthermore, on 4 July 2019, the online Single Market Scoreboard which depicts the performance of EU/EEA countries in the field of EU single market and identifies the relevant deficiencies was also released. More specifically, Member States are given green, yellow or red cards, indicating their excellent, average or below average performance in certain market fields respectively. In this regard, the aforementioned Scoreboard provides for a detailed overview of how EU single market rules were applied in the EEA in 2018, specifying how open and integrated certain markets are, how administrative issues concerning foreign workers (e.g. professional qualifications) are dealt with in each of them and each Member State's contribution to the formation of EU tools that aim to optimize the single market's function. It can be inferred from the relevant Scoreboard that Scandinavian countries (Finland, Sweden) and countries of eastern Europe, such as Slovakia and Lithuania, were numbered among the best forming countries, whereas Mediterranean countries (Greece, Italy, Spain) and Luxemburg received the most red and yellow cards.

Commission Moves against MS for not Respecting EU Energy Rules

by Kosmas Karanikolas (Athens)

On 26 July 2019, Commission's "infringement package" was released, encompassing the measures that the latter recently adopted, pursuant to art. 258 TFEU, in order to address Member States' (MS) non-compliance with EU legislation on energy issues. This procedure starts with the "letters of formal notice". Upon failure of the recipients of these formal notices to persuasively reply to the Commission within 2 months, the latter may send a reasoned opinion to them and, upon continuation of the breach, the European Commission is further entitled to bring the issue before the Court of Justice of the EU (EJEU).

Thus, the Commission commenced the preliminary phase of the *infringement procedure*, through the consignment of **letters of formal notice**, against several Member States (Estonia, Denmark, Greece, Hungary, Italy, Malta, Poland, and Slovakia) upon the ascertainment that they erred to fully transpose the requirements of the Biofuels Directive, i.e. Directive (EU) 2015/1513, which requires the adaptation of measures enabling the facilitation of land use change in view of enhancing sustainable biofuel production. Moreover, Malta was the recipient of another letter of formal notice insofar the latter did not comply with its obligation to report the energy-efficient buildings in its territory and draw up a national plan outlining the measures employed to increase the number of nearly zero-energy buildings, according to the Buildings' Energy Performance Directive (Directive 2010/31/EU).

Furthermore, the European Commission entered into the second phase of the *infringement procedure*, by sending **reasoned opinions** to several MS (Austria, Germany, Slovakia, Spain, Sweden and the United Kingdom) demanding the infallible harmonization of their national law with the provisions of the Energy Efficiency Directive (2012/27/EU) as well its unimpeded implementation. Another reasoned opinion was addressed to Romania inasmuch as, despite the amendment of its legislation on natural gas trade following a previous reasoned opinion sent in 2014, it still retains the obligation imposed on natural gas generators to preferentially sell natural gas on the Romanian market. It is reminded that such confinement breaches Romania's commitment to remove barriers to exports of natural gas and further promote the formulation of a single natural gas market in EU, originating from

primary (art. 35-36 TFEU) as well as secondary (Directive 2009/73/EC on common rules for the internal market in natural gas) EU legislation.

Finally, the European Commission initiated the third phase of the *infringement procedure*, by referring two Member States to CJEU for breaching the EU Energy rules. More specifically, (i.) the European Commission indicted Belgium insofar the latter disobeyed its obligation to conform with key provisions on the functioning of energy markets, contained in the Electricity and Gas Directives (2009/72/EC and 2009/73/EC). In particular, contrary to the requirements of the aforementioned Directives, the Belgian regulator was not conferred the authority to take binding decisions on electricity and gas undertakings, being confined to make relevant proposals to the government, while the government remained competent for the configuration of the conditions for connection to the electricity/gas networks, instead of the regulator. Finally, Belgian law did not guarantee that transmission system operators actually control the whole of the electricity or gas network, being thus incapable of ensuring non-discriminatory access of suppliers to the grid. At the same time, (ii.) Italy was referred to CJEU insofar it failed to timely transpose the revised basic safety standards for protection against the dangers arising from exposure to ionising radiation, pursuant to Directive 2013/59/Euratom, which modernises and consolidates European radiation protection legislation. It is reminded that the aforementioned Directive, in response to the concerns raised following the Fukushima nuclear accident, encompasses rules on basic safety standards to protect people against the dangers stemming from exposure to ionising radiation, while it also necessitates the drafting of emergency preparedness plans for such undesirable contingencies.

Two Reasoned Requests of the EnC Secretariat to the Ministerial Council

by Mirjana Mladenovic (Belgrade)

On 12 July 2019, the Energy Community Secretariat (Secretariat) submitted two reasoned requests to the Ministerial Council (Council) for issuance of the decision based on Article 91 of the Energy Community Treaty (Treaty), which provides that the Ministerial Council may determine the existence of a breach by a Party of its obligations.

One Request concerns environment, specifically the case ESC 6/18 pertaining to the failure of the Kosovo to adopt the laws, regulations and administrative provisions necessary to comply with Articles 4(1) and 4(3) as well as Parts A of Annexes III, IV, V, VI and VII of Directive 2001/80/EC and Article 30(3) as well as Part 2 of Annex V of Directive 2010/75/EU. Namely, by not transposing the latter provisions and by not implementing those provisions into national law, Kosovo fails to comply with Article 12 of the Treaty, which provides that each Contracting Party shall implement the *acquis communautaire* on environment in compliance with the timetable for the implementation of those measures set out in Annex II to the Treaty. Also, Kosovo fails to comply with Article 16 of the Treaty, which provides what does in the terms of the Treaty *acquis communautaire* implies, read in conjunction with Article 1(2) of Decision 2013/06/MC-ENC as well as with the above provisions of the Directives.

The other Request concerns gas, specifically the case ESC 13/17 pertaining to the failure of the Republic of Serbia to ensure unrestricted non-discriminatory third party access to the Horgoš interconnection point. As we mentioned in our previous Articles, the Republic of Serbia infringes its obligation to ensure non-discriminatory third party access to the natural gas transmission system. Therefore, on 19 April 2019, the Secretariat submitted a Reasoned Request to the Council in Case ECS-13/17, since the Secretariat sent an Opening Letter to the Republic of Serbia to follow up on its Opening Letter of 27 July 2018, in which the Republic of Serbia has been given the possibility until 8 October 2018 to comply of its own accord with the requirements of the Treaty, or to justify its position.

Given that the preliminary procedure was conducted, the following step is for the Ministerial Council to take a decision on the alleged breaches of the Energy Community *acquis* at its meeting which will be held on 13 December 2019.

Electricity

ACER no01/2019 Recommendation

by Leonidas Voulgaris (Athens)

On 8 August 2019, the EU Agency for the Cooperation of Energy Regulators (ACER) issued a Recommendation on the implementation of the 70% minimum margin to be made available for cross-border trade, according to Article 16.8 of the EU Regulation 2019/943 on the internal market for electricity. The development of rules for the calculation and allocation of cross-zonal capacities is an integral step, within the European legal and regulatory framework, for the completion of the internal electricity market. The primary objective of the above-mentioned rules is an efficient management of network congestions, i.e. situations when the capacity of a network is insufficient to accommodate all requests for transport over this network. Despite many legal, regulatory and implementation efforts, capacity calculation has in general not yet reached the expected level of efficiency, transparency and non-discrimination in Europe.

According to the EU Regulation 2019/943, the Transmission System Operators ('TSOs') shall not limit the volume of interconnection capacity as a means of solving congestion inside their own bidding-zone, or as a means of managing flows resulting from transactions internal to bidding-zones. In order to reach this goal the TSOs shall, as from 1 January 2020, make available for cross-zonal trade a minimum binding level of capacity (70%) without prejudice of operational security limits. The purpose of offering a

minimum level of available capacity for cross-zonal trade is to reduce the effects, and namely the discrimination of cross-border exchanges in EU vis-à-vis exchanges within countries to the detriment of end consumers, and to give a predictable cross-zonal capacity value for market participants. Thus the ACER no01/2019 Recommendation provides guidance to the TSOs on how to implement this minimum capacity target referred to above, and to regulatory authorities on how to monitor the achievement of this target in a harmonised and consistent way.

In that regard, the Recommendation offers a detailed description of calculation methods to be used by the regulatory authorities for the calculation of values and namely for the level of the margin available for cross-zonal trade (MACZT) in all coordination areas, for all considered timeframes. According to the ACER Recommendation in order to implement these calculation methods and attain the minimum binding level of 70% capacity for cross-zonal trade pursuant to Article 16.8 of the EU Regulation 2019/943, the provision of certain data by TSOs will be critical in enabling regulatory authorities to monitor, and it will be instrumental in facilitating the Agency's monitoring of the internal electricity market. To that end, the Agency will support regulatory authorities in order to collect this data and calculate certain values while also assess the legal compliance of the TSOs. Finally the ACER Recommendation specifies the data which the regulatory authorities and the Agency will request from TSOs for these purposes.

ACER Methodology for Redispatching and Countertrading in SEE Region

by Mira Todorovic Symeonides (Athens)



On 27 July 2019, the EU Agency for the Cooperation of Energy Regulators (ACER) published a Decision setting the common methodology for coordinated redispatching and countertrading in Bulgaria, Greece and Romania (the South East Europe region) and amending the respective proposal of the three Transmission System Operators (TSOs) constituting the South East Europe capacity calculation region: ESO EAD (Bulgaria), ADMIE (Greece) and Transelectrica (Romania). The Capacity Allocation and Congestion Management (CACM) Regulation (2015/1222/EU) regulate the requirements for cross-zonal CACM in the day-ahead and intraday electricity markets, which also include the development of a common methodology for coordinated redispatching and countertrading (RDCT) of each capacity calculation region. The adopted methodology establishes a coordinated use of RDCT resources among the SEE capacity calculation region. By these amendments, the Agency has introduced a firm implementation timeline for the implementation of the common coordinated RDCT methodology that should be implemented no later than 1 July 2021.

MoU on the Establishment of a Regional Coordination Center

by Andriani Kantilieraki (Athens)

On 12 July 2019, the three south-eastern Transmission System Operators (TSOs) for electricity, i.e. ESO (for Bulgaria), ADMIE (for Greece) and Transelectrica (for Romania) signed a Memorandum of Understanding (MoU) on the establishment of a Regional Coordination Center (RCC). The aforementioned TSOs who belong to the South-East Europe (SEE) Capacity Calculation Region (CCR) aimed to provide a solid framework for the establishment of the RCC based on the principle of most efficient and timely fulfillment of the obligations set forth by the Third European Energy Package and the Clean Energy for All Europeans Package, in order to further strengthen regional cooperation for the security of the power system.

Amongst the most notable milestones agreed in the MoU are the following: the assignment of the SEE Capacity calculator, the signing the contractual arrangement for SEE Capacity calculator (occurring on 15 September 2019), the decision regarding the location of the RCC (which is planned for 1 November 2019) and the signing of the required documents for the RCC incorporation. In more detail, the parties mutually agreed to prepare the operational characteristics taking under consideration that: a) ESO will provide Capacity Calculation Services and will be temporarily nominated as Capacity Calculator for SEE CCR (until the RCC is incorporated as a separate company) and b) ADMIE will provide the service of Coordinated Security Analysis for the SEE CCR (once again until the RCC is incorporated).

Competition & State Aid

EU/ SA.53821: Italian CM Introduced Stringent CO2 Emission Limits

by Maria Ioannou (Athens)

On 14 June 2019, the European Commission issued a decision with which it concluded that amendments proposed by Italy regarding its capacity mechanism were compliant with EU State Aid rules and authorised the amended state aid scheme until 31 December 2028.

Earlier in this case Italy had notified to the Commission its intention to introduce a volume-based and market-wide electricity capacity mechanism in order to tackle the problem of decreasing levels of generation adequacy which were attributed to relevant market

failures. The scheme allowed for the participation in the capacity mechanism of all capacity providers -including foreign capacity- that met the requirements described in said 2018 decision, irrespective of the CO₂ they emitted. In 2018 this scheme was cleared as state aid compatible with the TFEU.

However, before the capacity mechanism was implemented by Italy, the EU adopted the revised Electricity Regulation 2019/943 as part of the Clean Energy for All Europeans legislation. This Regulation contains for the first time provisions on capacity mechanisms, including CO₂ emission limits for participating power plants.

Even though the Regulation –now in force- allows for a transitional period until 2025 for Member States to apply these limits, Italy notified the Commission of its plan to amend its capacity mechanism so as to restrict the participation of power plants not respecting the stringent CO₂ emission limits introduced by the revised Electricity Regulation even before the latter had entered into force, adhering to the 2018 state aid approval decision stating among others that it would need to be interpreted in the light of the new Electricity Regulation even though the Regulation had not yet been adopted at the time this decision was issued. The notified amendments were in conformity with Italy's stated intention to phase out coal-fired generation by 2025. At the same time, Italy would insure that the mechanism remains competitive and open to new entries to the market. The CO₂ emission limits introduced would also apply in principle to foreign capacity, although the rules governing the participation of such foreign capacity would remain the same as in the approved 2018 scheme, until the introduction of cross-border balancing markets. Until the agreements that facilitate the participation of foreign capacity are concluded, Italy does not have the means to verify whether foreign capacity complies with the CO₂ emission limits.

The Commission assessed the proposed amendments under EU State aid rules and found the state aid to be necessary, appropriate for addressing the energy supply inadequacy concerns while at the same time increasing the level of environmentally friendly investments, as well as proportionate and not as significantly distorting competition and trade in the Single Market. The Commission therefore concluded that the amended scheme complied with EU State aid rules.

EU/ SA.45274, SA.45275, SA.45276, SA.47246, SA.47247 and SA.48007: Commission Clears French Support to Six Offshore Wind Farms

by Viktoria Chatzara (Athens)

On 23 August 2019, the European Commission's decisions dated 26 July 2019 on six state aid cases concerning support to be granted by France to six offshore wind farms (cases No. SA.45274, SA.45275, SA.45276, SA.47246, SA.47247 and SA.48007) were published in the Official Journal of the EU. The wind farms at hand, at the sites "Courselles-sur-Mer", "Fécamp", "Saint-Nazaire", "Iles d'Yeu / Noirmoutier", "Dieppe / Le Tréport" and "Saint-Brieuc" located in French territorial water off the North-Western coast, were the first selected offshore wind projects for electricity generation to be supported by France. According to the publicly available information, each of the six wind farms will consist of 62 to 83 wind turbines, with an installed capacity of 450 to 498 MW per farm. As a result, the six wind farms are expected, when finalized, to increase France's renewable generation capacity by about 3 GWs; in this relevance it is noted that the construction of the first wind farm is expected to begin within this year, and the wind farms to be operational as of 2022.

With respect to the aid to be granted by France in the two sets of tender procurement procedures, to the above mentioned six wind farms, it will be in the form of feed-in tariffs (ranging from €131 MWh to €155 MWh) for a period of 20 years. The Commission assessed these six support measures as constituting state aid schemes under the applicable EU state aid rules, including the Commission's 2008 Guidelines on State aid for environmental protection. One of the main points made by the Commission in the course of its assessment was that the contemplated schemes will assist France in achieving its climate targets, including its CO₂ emission goals, in line with the environmental objectives established by the EU, as they will help in the increase of the country's electricity produced from renewable energy sources. Furthermore, the Commission found that the level of aid that will be granted to the six projects is proportionate and does not result in any overcompensation of the beneficiaries, thus it will not distort the competition in the market. In this regard, the Commission concluded that the proposed support schemes for the six French offshore wind farms are in compliance with the EU state aid rules and, as such, decided not to raise any objections.

RES

Climate action: EIB to Finance Construction of 21 Wind Farms in Spain

by Nikoleta Nikolaou (Athens)

On 1 August 2019, was published at the official site of the European Commission a press release regarding the initiative of the European Investment Bank (EIB) to finance one of the biggest wind power infrastructure projects in Spain. More specifically, the aforementioned wind farms will be located in six autonomous communities (Andalusia, Asturias, Castilla-La Mancha, Castilla León, Galicia and Navarra), have a total installed capacity of 547 MW and will generate energy equivalent to the power use of 360 000 homes, making this project undeniably one of the largest wind power projects financed by the EIB in Spain. Furthermore, the wind farms included in this project were winning bids in the renewable energy auction that took place in Spain in July 2017, and have been developed by the Alfanar group. The EU bank will provide up to €385m to the successful bidder in Spain's third renewable

energy auction. The two entities have already signed the first of these, under which the EIB is providing €44.2m to develop the first phase of the project. This EU bank financing, together with the additional loan from various financial institutions, will be provided via a Project Finance arrangement for the construction of the first four wind farms, which will have a capacity of around 99 MW.

In addition, a loan was signed under the Investment Plan for Europe (known as the Juncker Plan) whose support increases the EIB Group's capacity to finance investment projects that by their structure or nature have a higher risk profile. It is also significant that this project will not receive any public sector support.

Albania

Electricity

Amendments to the Procedure of Purchase of Electricity to Cover Grid Losses

by Manuela Cela (Tirana)

On 29 July 2019, The Albanian electricity Transmission System Operator (OST sh.a.) with letter no.14321 Prot., dated 03.07.2019, has forwarded to the Albanian energy regulatory (ERE) for approval an amendment on "Regulation on the procedures for the purchase of electricity for coverage of losses in network distribution and transmission and for purchase of energy electricity to ensure meeting of public service obligations". This proposal is a consequence of the financial situations that the Albanian electricity market operator (OSHEE sh.a) has faced in the past years, where mainly due to extreme adverse hydro situations, OSHEE is in severe liquidity difficulties. The proposal of OSHEE sh.a. it also relies on the fact that the companies participating in the energy purchase procedures of electricity realized during 2019, have accepted the proposal of OSHEE sh.a. changing the forecast for the payment deadline, agreeing voluntarily to perform it within 180 days of the last day of delivery. Previously attempts have been made to establish a transitional period during which payment deadlines from OSHEE sh.a. for traders winning auction sales of electricity in order to provide electricity to meet the needs of end customers, may be no later than 180 days from the day the electric energy is delivered, and again no solution was reached.

Based on this situation, ERE issued its decision No.123 regarding the initiation of the procedures for an amendment on "Regulation on the procedures for the purchase of electricity for coverage of losses in network distribution and transmission and for purchase of energy electricity to ensure meeting of public service obligations."

All TSOs Network Methodology for the Establishment of a CACM Regulation

by Manuela Cela (Tirana)

On 22 July 2019, the Albanian Energy Regulatory Authority (ERE) issued its decision No.116 regarding the initiation of the procedures for approving the "Proposal of all TSOs for a joint network methodology in accordance with article 17 of European Commission (EU) 2015/1222 of 24 July 2015, for the establishment of a capacity allocation and congestion management guide".

With decision No.88 dated 31 May 2019, ERE has initiated the procedures for adopting this joint network methodology. Following this decision, ERE published for three days in the press the notice of the initiation of this procedure and at the end of the announced deadline, without receiving comments or opinions from interested parties. On 13 June 2019, with letter no. 228/2 Prot., ERE has addressed the Competition Authority, Ministry of Infrastructure and Energy, for an opinion on the proposal above. At the end of the deadline for receipt of comments or opinions, it appeared that the Competition Authority, through letter no. 382/2 Prot., dated 02.07.2019, stated that the draft proposal does not contradict the Law No.9121, dated 28.07.2003 "On Protection of Competition".

Oil & Gas

Regulation on the Unified Accounting System in the Natural Gas Sector

by Manuela Cela (Tirana)

On 26 June 2019, the Albanian Energy Regulatory Authority (ERE) issued its decision No.103 regarding the initiation of the procedures for approving the transposition of regulation 2017/459, approved by decision no.2018/06 /PHGL-ENC "On the Establishment of a Network Code on Capacity Allocation Mechanisms in Gas Transmission systems".

ERE's decision was based on the following facts: the Albanian natural gas transmission system operator, "ALBGAS" sh.a. with letter no.18 Prot., dated 18.02.2019, has submitted for review and approval to ERE "The Network Code on Capacity Allocation Mechanisms in Gas Transmission systems", updated and translated to Albanian, in accordance with Law 102/2015 "On the Natural Gas Sector" as amended, specifically Article 19, paragraph 5 and paragraph 8, Article 44, paragraph 1. In generally this code creates a code of network that establishes capacity allocation mechanisms, taking into consideration general commercial rules, as well as technical rules regarding capacity allocation mechanisms. In reference to the decisions of the PHLG-ENC Energy Community

Secretariat, this code will become mandatory for all market participants. In the context of responsibilities monitoring, the Secretariat shall monitor and analyze how transmission system operators have implemented this regulation. With letter no.32/14, dated 05.04.2019., ERE published in the press the notice of the initiation of this procedure and also with letter no.298 prot, dated 11.04.2019, addressed to the interested parties, Competition Authority, Ministry of Infrastructure and Energy, Albpetrol sh.a and Albgaž sh.a, for an opinion on the proposal above, and at the end of the announced deadline, it turned out that there were no comments or opinions from interested parties.

BiH

Market

Government of FBiH Adopted Unbundling Program for two PPCs

by Vuk Stankovic (Belgrade)

On the session held on 22 August 2019, the Government of Federation of Bosnia and Herzegovina (FBiH), one of the two entities in Bosnia and Herzegovina, adopted the program for unbundling of public power sector (the Program). The Program is referring to restructuring of the Elektroprivreda BiH and Elektroprivreda Hrvatske Zajednice Herceg-Bosne (PPCs). The Program is rendered in line with the mandatory requirements set forth in Articles 14 of the Electricity Law. The restructuring of PPCs is planned in several stages, whereas the first stage envisages the implementation of the accounting and management unbundling and the establishment of Distribution System Operators. Subsequent stages will assume implementation of the functional unbundling of all activities and legal unbundling. The deadline for implementation of the phase is 15 months as of the approval granted by the Federation Parliament. Pursuant to the official paper released from Government the aim of the Program is to reform wider aspects of electricity sector including the operation of the Energy Regulatory Commission in the FBiH.



BULGARIA

Electricity

Request for a Preliminary Ruling “Elektrozpredelenie Yug EAD” against Energy and Water Regulatory Commission - Case C-31/18

by Apostolos Christakoudis (Sofia)

On 17 January 2018, the applicant Elektrozpredelenie Yug EAD has submitted a request for preliminary ruling from the Administrative court Sofia with the following preliminary questions:

Are the provisions of Article 2.3 and 2.5 of Directive 2009/72/EC 1 to be interpreted as meaning that the voltage is the sole criterion by which the distribution system is distinguished from the transmission system and, by extension, electricity ‘distribution’ activities are distinguished from electricity ‘transmission’ activities and that, despite their freedom of action to allocate system users to either the transmission or the distribution system, Member States are not allowed to introduce ownership of the assets used to exercise those activities as an additional criterion for the purpose of distinguishing transmission activities from distribution activities?

If the first question is answered in the affirmative: should electricity customers connected to the medium-voltage network always be treated as customers of the distribution system operator which holds a licence for the area concerned, irrespective of who owns the equipment to which the customer’s electrical installations are directly connected and irrespective of the contracts concluded directly between the customer and the transmission system operator?

If the first question is answered in the negative: are national rules in keeping with the spirit and purpose of Directive 2009/72/EC permissible, such as those laid down in Paragraph 1(44), read in combination with Paragraph 1(20), of the Addenda to the Bulgarian Energy Law, which state that ‘transmission of electricity’ means the transport of electricity via the transmission network and that ‘electricity transmission system’ means all the power lines and installations used for the transmission, transformation from high to medium voltage and redistribution of electricity? All other things being equal, are national regulations permissible, such as those laid down in Article 88(1) of the Bulgarian Energy Law, which states that electricity is to be distributed and electricity distribution systems are to be operated by distribution network operators which own those networks in a specific area and hold an electricity distribution licence for that area?

Negotiations over Power Purchase Agreement Termination for Maritza East 3

by Apostolos Christakoudis (Sofia)

On 11 September 2019, the Bulgarian government initiated a procedure for negotiations with Contour Global Maritza East 3rd for termination of the power purchase agreement (PPA) with the Bulgarian Electric Company. Maritza East 3 is a U.S. owned company and it is a lignite thermal power plant located near the village of Mednikarovo, Stara Zagora district.

In the course of its operations, Maritza East 3 has operates in full compliance with Europe's highest standards for safety and environmental protection. During the upcoming negotiations which will be led by the vice-prime minister, and the minister of energy, a coordination with the European Commission's Competition Directorate is expected. The Directorate has already initiated proceedings based on a complaint from the Bulgarian Energy and Water Regulatory Commission (EWRC). The complaint contains accusation about the PPA constitutes incompatible state aid.

The Energy Minister Temenuzhka Pekova expressed the opinion that the termination of the PPA would not incur any penalties since the initial investment was repaid in full. If the PPA is terminated Countour Global will continue selling electricity on the free market and this can lead to cheaper electricity for the consumers.

CROATIA

Competition & State Aid

SA.51983/ Commission Approves Public Support LNG Terminal at Krk Island

by Evridiki Evangelopoulou (Thessaloniki)

On 31 July 2019, the European Commission published a press release announcing its approval of the state aid for the construction and operation of a liquid natural gas (LNG) terminal at Krk island in Croatia, in case SA.51983. It is believed that the project will contribute to the security of energy supplies, notably in the Central and South-Eastern regions, and the enhancement of the competition, resulting in the benefit of citizens in the area. In particular, the support measures, which are in line with EU State aid rules as they contribute to further key strategic objectives of the EU, pertain the construction and operation of a floating LNG terminal, consisting of a floating storage and regasification unit, as well as the connections to the national gas transmission network.

The total investment costs to build the terminal amount to €233.6 million. This will be financed through: a direct equity contribution of €32.2 million from the LNG terminal company shareholders; a contribution of €101.4 million from the Connecting Europe Facility, which is centrally managed by the European Commission, through the Innovation and Networks Executive Agency (INEA); and a direct financial contribution of €100 million from the Croatian State budget. In addition, Croatia will grant a tariff compensation called 'security of supply fee', which is financed by levies charged by the gas transmission system operator to gas users along with gas transmission tariffs, in case revenues from the terminal fees are not sufficient to cover operating expenses. The fees applied by the terminal to its users are fully regulated (set by the Croatian Energy Regulator) and the terminal is subject to third-party access, in line with internal market legislation.

GREECE

Electricity

Reducing of the ETMEAR (RES Levy)

by Nikoleta Nikolaou (Athens)

On 31 August 2019, the Hellenic Parliament adopted the law 4625 (OJ A' 139/2019) on the readjustment of Special Duty of Greenhouse Gas Emissions Reduction (ETMEAR), which is also known as RES levy since it contributes to the RES account from which RES producers' state aid is paid.

More specifically, the new law amends article 143 of the framework energy law, no 4001/2011 regulating the income to the RES account. The ETMEAR is imposed uniformly to all consumers throughout the Greek territory, and is calculated on the amounts of electricity absorbed by the network or the system, which charge is defined as the Basic Charges and is applicable from 1 January 2019. However the charged calculated as a percentage of the Basic Charges will be applicable to the users entitled to the reduced charges in compliance with European regulation.

The law further authorizes the Ministry of Environment and Energy to define the maximum and minimum charges that may be imposed on individual consumers as well as the procedure for the submission of applications for the integration in category of reduced charge beneficiaries. In addition, the Minister will determine the eligibility criteria, the amount of contribution fee for the

examination of an application, the obligations of beneficiaries of reduced charges as well as the fines and the way of their enforcement in case of violation of these obligations. The RES and Certificates of Origin Operator (DAPEEP SA) is responsible for implementation of the provisions regarding the beneficiaries of reduced charges. Especially for the years 2019 and 2020 and with effect from 01.01.2019, the Basic Charges are determined by decision of the Minister of Environment and Energy and by the year 2021 by the RAE. Until the beginning of the implementation of the above reduced charges concerning, the charges for the calendar year 2018 of ETMEAR regulated by the RAE decision no 1.101/2017 will continue to apply.

Oil & Gas

Approval of the Updated Natural Gas Emergency Plan

by Mira Todorovic Symeonides (Athens)



On 25 June 2019, Greek energy regulatory authority's (RAE) decision no. 567/2019 on the approval of the updated Emergency plan in compliance with articles 8 and 10 of the Regulation EU 2017/1938 concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No 994/2010 as of 30 May 2019, was published in the Official Journal (B' 2501/2019). The Decision approves the updated plan prepared by the Natural Gas Transmission System Operator (DESFA) and supplemented by RAE and communicates the plan to the European Commission. It updates the initial 2013 plan (RAE decision 122/2013) as updated and amended in 2015 (RAE decision 405/2015) upon the 2017 Risk Assessment Study and 2018 RAE decision on the approval of the respective Preventive Action Plan, all with the aim to enhance consumer

protection in case of occurrence of significant disturbance in regard to demand or supply of natural gas as well as to increase the level of preparedness of the power producers for disturbance of the gas supply.

IGB Receives Independent Natural Gas System Licence

by Paraskevi Res (Athens)

On 18 July 2019, the Hellenic Energy Regulatory Authority (RAE) by its decision no 671/2019 granted to the Bulgarian company IGB AD (the Company), established to develop the Interconnector Greece Bulgaria Project, the licence for operation of an Independent Natural Gas System (INGS licence). The Company is a joint venture of two companies, the state-owned Bulgarian Energy Holding Company (BEH), with 50% and IGA Poseidon SA, a Greek Company, with 50%. IGI Poseidon S.A. is a 50-50% Joint Venture between the Greek public natural gas company DEPA S.A. and Italian Edison S.p.A.

The above licence, concerns the Greek section of the IGB Project. The IGB gas pipeline is designed to connect to the Greek National Gas Transmission System in the area of Komotini (Greece) and the Bulgarian National Gas Transmission System in the region of Stara Zagora. This licence constitutes the last permitting step before the start of construction process of the project. The licence is valid for 50 years. According to the Decision, the IGB gas pipeline will be connected to the National Natural Gas Transmission System, the Trans Adriatic Pipeline (TAP) and Bulgaria's transmission system, and will strengthen Greece's position as an energy hub, promoting our country's gas market and creating benefits for both Greek and Bulgarian consumers.

Approval of the 4th Amendment of the Network Code on Gas Transmission Tariff Structures

by Andriani Kantilieraki (Athens)

On 28 June 2019, RAE's decision n. 539/2019 on the approval of the 4th amendment of the Network Code on gas transmission tariff structures was published in the Official Government Gazette (B' 2601/28.06.2019). The aforementioned decision was taken in compliance with the provisions of article 88 of law 4001/2001 and the European Regulation 2017/460 on the establishment of a network code on harmonised transmission tariff structures for gas. The Regulatory Authority for Energy took under consideration the provisions of national legislation as well as the European acquis and the amendments proposed by the Hellenic Gas Transmission System Operator (DESFA) and concluded on the methodology for the tariff structures determination. According to the decision, network tariffs will be calculated on the basis of (among others) the transmission services revenue and the forecasted contracted capacity for the first year of the regulated period, in accordance with the provisions of article 19 of the decision. The main goal of the amendment is to allow the network users to anticipate transmission costs and ensure that the prices do not distort cross-border trading.

Infrastructure

Interconnection between Crete and Attica

by Leonidas Voulgaris (Athens)

On 22 July 2019 and on 5 August 2019 the Independent Power Transmission Operator (ADMIE) provided the updated information, in two press conferences, on the subject of Crete's power interconnection with the Mainland System.

ADMIE first announced on 22 July 2019 that the Supreme Administrative Court (Council of State) by its two decisions no 1271/2019 and no 1272/2019 (both published on 11 July 2019) rejected the applications for the annulment submitted by the association "Artemis" and the local municipality of Monemvasia. These applications of annulment were filed by the above-mentioned legal persons against the Ministerial Decree issued by the Ministry of Environment and Electricity on 29 September 2017 approving the project of Crete's power interconnection line (both above ground as underground and submarine) with the Peloponnese System (Substation Molaon-Substation Chania) for its compliance with the legal environmental conditions. Further it announced that on the same day the Authority for the Examination of Preliminary Appeals (AEPP) rejected the appeal that the Cypriot company "Eurasia Interconnector Ltd" filed against the public tender for the Conversion Stations of electricity interconnection for Uninterrupted Power between Crete and Attica. The Authority ruled for procedural reasons that the above-mentioned company lacking the necessary requirements and qualifications provided by law for its participation to the above-mentioned open tender had no legitimate interest to raise the claim at issue. It was also announced the flagship project for the electrical interconnection of Crete-Peloponnese will be completed by the year 2020 and offers should continue to be applied to ADMIE for the public tender of the Crete-Attica interconnection project, a project that is until now undertaken by the subsidiary company of ADMIE named "Ariadni Interconnection".

On 5 August 2019 ADMIE announced the strong interest of all Greek and foreign major cable constructing companies. The tenders for all forth parts of the projects have already been finalized and conclusion of the respective agreements is expected by the end of this year. The first and second part of the project are for the two major submarine cables (western and eastern network) of a total cost of €225 million each; for the third part of the project of a total cost of €115 million, while the fourth and last part of the project of a total cost of 20 million euro.

ROMANIA

Oil & Gas

Tender for Petrol Fields Exploration, Development and Exploitation

by Raluca Vasile (Bucharest)

On 24 July 2019, Order no. 273 issued by the Romanian National Agency for Mineral Resources (NAMR) was published in the Romanian Official Gazette no. 609. By the aforementioned Order, the Agency offers by public invitation to tender the concession of the oil exploration, development and exploitation operations in 28 Romanian perimeters 22 of which are onshore perimeters whereas the other 6 are offshore perimeters.

According to the provisions of the Order, offers may be submitted by both Romanian and foreign legal entities. In order to formulate tenders, NAMR provides geological data and information to interested legal entities and the access to these is made on the basis of a written request, of a signed confidentiality agreement and under the conditions of the payment by the applicant of the fees for the acquisition of the data packages and the fees for consulting and using data and information from the national geological fund. The data and information will be made available to interested legal entities from the date of publication of the announcement by the organization of the public invitation to tender in the EU Official Journal, which constitutes the date of the official opening of the public invitation to tender. On that note, it should be mentioned that the announcement has not yet been published in the Official EU Journal.

The offers shall be submitted in the Romanian language within 120 business days after the date of the announcement in the Official Journal of the EU.

The commission for the evaluation and negotiation of the oil agreements will then carry out the evaluation of the offers, considering the following: the proposed minimum exploration program; the technical and financial capacity of the tenderer; the impact on the environment and the program for its restoration; technology transfer and staff development programs. The proposed deadline for concluding the oil agreement is a maximum of 9 months from the start of negotiation, except in cases where the environmental impact assessment procedure is required for certain perimeters that require the complete environmental impact procedure to be completed.

SERBIA

Market

Planned Merger between Serbian and Hungarian Power Exchanges to go ahead

by Aleksandar Mladenovic (Belgrade)

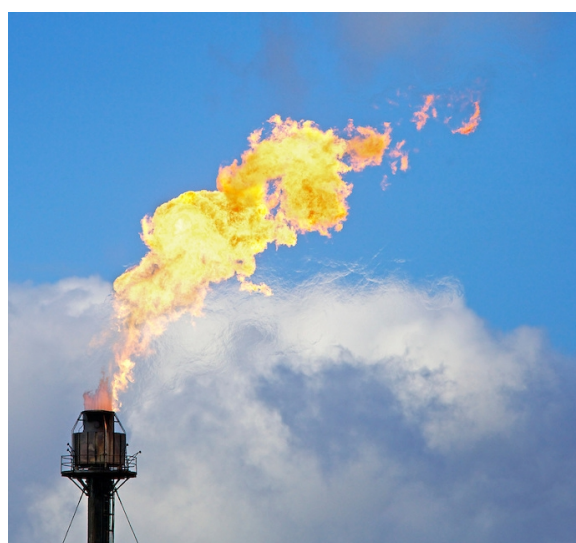
According to the latest reports dated 21 August 2019, the merger between SEEPEX and HUPX is planned to be completed by the end of 2019, subject to all applicable regulatory and legal requirements. Furthermore, the venture remains open for other parties who might wish to join this activity with the aim of driving forward the strong cross-regional power exchange in the Central and South Eastern European region.

In February 2018, a memorandum of understanding (MoU) envisaging a merger between the spot power markets of SEEPEX (for Serbia) and HUPX (for Hungary) was signed. Aside from HUPX and SEEPEX, the penta-lateral MoU was signed by Serbian state-owned transmission system operator (TSO) Elektromreža Srbije (EMS) and its Hungarian counterpart MAVIR, as well as the European Power Exchange (EPEX SPOT). The aforementioned agreement foresees a merger between the HUPX and SEEPEX spot power businesses, while maintaining a steady link to EPEX SPOT, in order to create a strong player in the Central and South Eastern European (CESE) region. EPEX SPOT, as well as the Transmission System Operators (TSOs) EMS and MAVIR, are to act as founder shareholders of the newly established power exchange.

Operation Licence of the Natural Gas TSO Revoked

by Mirjana Mladenovic (Belgrade)

On 15 July 2019, the Council of the Energy Agency of the Republic of Serbia (AERS) on its session and in line with the Energy Law (Law) and AERS regulations, adopted the Decision on Revocation of the Certificate issued to the company Yugorosgaz-Transport d.o.o. Niš (Yugorosgaz-Transport). Namely, Yugorosgaz-Transport failed to comply, within twelve months, with the Decision of the AERS as of 20 June 2017 and, among other, to: a) undertake all necessary activities in order to harmonize its organization and operations in the way to fulfil the requirements regarding the independence of the system operator according to the independent model system operator and, if necessary, take action before the competent authorities of the Republic of Serbia in order to perform the harmonization with the positive regulations; and b) deliver a program of non-discriminatory behaviour adopted in accordance with the Energy Law etc. Having in mind that Yugorosgaz-Transport did not take all necessary actions prescribed by the said Decision and did not comply with the conditions prescribed for the system operator according to the independent operator model until 13 July 2019, its licence has been revoked.





Electricity

Government Adopted PP Decree Addendum

by Vuk Stankovic (Belgrade)







On 25 July 2019, the Government of the Republic of Serbia adopted a Decree amending the Decree on the conditions and procedure for acquiring the status of privileged electricity producer, temporary privileged producer and producer of electricity from renewable energy sources (Official Gazette 54/19) (PP Decree Addendum). The PP Decree Addendum entered into force on 3 August 2019. The aim of PP Decree Addendum is to establish more accurate wording in the provisions related to the extension of the temporary privileged producer status (TPP Status). Particularly, Article 14 of the PP Decree now stipulates that if the TPP submits one or more applications for the renewal of the TPP Status, the total duration of the extension of such status would not exceed the period of validity set forth in the Decision where such TPP Status is granted.

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