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intended for the information of our clients and contacts, aiming to highlight selected recent developments in SE European law. The highlights do not cover every important topic; they include limited information on the selected topic without extending to legal or other advice. Readers should not act upon them without taking relevant professional advice. *Copyright © 2014, Rokas, All rights reserved.*



## Ukraine: Energy State Companies Subject for Auction Sale for 2014

by Alina Karas (Kiev)

On 17 July 2014, the Cabinet of Ministers of Ukraine issued the Order no. 667-p on Confirmation of the List of State Owned Companies Subject to Privatisation in 2014. As regards energy companies, the list includes 38 companies for distribution and supply of oil and gas, 22 regional electricity distribution companies and 5 thermal power plants. With regard to most of the energy companies of the list the State intends to sell the majority package of shares. Thus, regarding the two gas supply companies PJSC 'Cherkasygas' and PJSC 'Kirovogradgas' 51%; regarding the three thermal power plants PJSC 'Kherson Thermal Energy Company', PJSC 'Odessa Thermal Energy Company' and PJSC 'Mikholaiiv Thermal Energy Company' 99,833%, 99,99% and 100% respectively, while regarding the four electricity supply companies PJSC 'Zaporiziaoblenergo', PJSC 'Mikholaiivoblenergo', PJSC 'Kharkivoblenergo' and PJSC 'Khmelnitskoblenergo' 60%-70% of the share capital is planned for sale. The time frame and the priority of their sale shall be further established by decisions of the Cabinet of Ministers, based on the plan-charts of monthly sale of certain objects provided by the State Property Fund. The latter will be in charge of organisation of the auctions and sale.

## EU: Commission Approves National Energy Support Schemes

by Viktoria Chatzara (Athens)

On 23 July 2014 the European Commission issued several decisions approving national schemes adopted by Germany and UK concerning electricity generation. The Commission assessed these measures in light of the new state aid Guidelines on Energy and Environmental Protection and concluded that they are in line with EU objectives, such as the promotion of renewable energy and environmental protection, without unduly distorting the internal energy market. In particular, regarding Germany, the Commission approved the new Renewable Energy Act (EEG 2014), which provides support for the production of electricity from renewable energy sources and from mining gas. The support system provided in EEG 2014 concerns producers of renewable electricity, who will obtain aid in the form of market premiums paid on top of the market price for electricity. Moreover, the scheme described in EEG 2014 states that it will be open for up to 5% of the tendered capacity to installations located in Member States which have entered into a cooperation agreement with Germany. Further, reductions are provided for energy-intensive users, in sectors eligible for such reductions under the Guidelines on competitiveness grounds, since they are both electro-intensive and exposed to international trade.

As far as the national measures taken by UK are concerned, the Commission authorised the UK Capacity Market electricity generation scheme, which aims at ensuring that sufficient electricity supply is available to cover consumption at peak times. According to this scheme, the Great Britain System Operator will organise annual

centrally – managed auctions, where successful bidders will be required to provide capacity at times of great demand, in return for a steady payment. It is provided that this measure will be financed through a levy on electricity suppliers. Commission also approved the UK aid package for renewable electricity production, pursuant to which UK plans to support renewable electricity production through market-based mechanisms, during a 10-year long period. The aid will be granted in the form of a variable premium on top of a reference electricity (wholesale) price and up to a pre-defined strike price, pursuant to a “Contract for Difference”, and it will be financed by means of a tax imposed on energy suppliers, which in a first stage shall not be imposed on imported renewable electricity, in order for discrimination against overseas generators to be avoided. To be noted that the Commission also approved aid for five large off-shore wind projects, ruling that such aid is in line with the Guidelines, as it aims at avoiding support in excess of what is really necessary for the investments to be carried out.



### **Greece: Energy Regulator Publishes Draft Distribution Network Code for Public Consultation**

*by Lazaros Sidiropoulos (Athens)*

Following the adoption of Decisions no. 82/2014 and no. 83/2014 in March 2014 setting out the main principles for the completion of unbundling of the Greek electricity distribution network operator HEDNO, which is a 100% subsidiary of PPC (Greece’s major electricity producer and supplier), the energy regulator RAE presented for public consultation on 31 July 2014 a draft distribution network code, aimed to serve as fundamental rulebook comprehensively regulating all major issues in relation to the electricity distribution activity, including: planning, development, operation and maintenance of the distribution network; assurance of the users’ effective access to the network; quality of customer services as well as of the electricity provided; methodology of calculation of the required revenue of HEDNO as well of the charges for use and connection to the network. The final date for submission of comments in the context of the public consultation is set for 17 October 2014

### **BiH: State Electricity Regulatory Commission Adopted Tariffs for Electricity Transmission Services**

*by Nebojsa Milanovic (Banja Luka)*

On 30 July 2014, the State Electricity Regulatory Commission of BiH (SERC) adopted the Decision on Tariffs for Electricity Transmission Services. The annual requirement of the Company for the Transmission of Electric Power in Bosnia and Herzegovina (Elektroprenos) for 2014 shall amount to KM 105.749.282 (approx. €54.068.749) and the tariff for electricity transmission services shall be as follows: the part of transmission network charges pertaining to energy shall amount to 0,578 pfennig/kWh (approx 0.2955€/kWh) and the part of transmission network charges pertaining to capacity shall amount to 1.519 KM/kWh (approx 0.7766 €/kWh). The average transmission network

charges shall amount to 0,889 pfennig/kWh (approx. 0.4545 /kWh). The tariffs as set by the Decision entered into force on 1 August 2014.

### **Greece: Revision of the Capacity Adequacy Mechanism**

*by Lazaros Sidiropoulos (Athens)*

On 29 July 2014, the Greek energy regulator RAE published for public consultation a scheme for a reform of the country's capacity adequacy mechanism. The so far existing mechanism, which obliged suppliers to buy capacity certificates from power producers, served two main purposes: apart from ensuring adequacy of the system and security of supply of electricity, it also aimed to address market failures by providing for the sustainability of investments in new production units. Such market failures shall now be addressed by means of other measures also planned within the context of the radical electricity market reform which is in progress, while the revised capacity adequacy mechanism shall focus on providing the means to ensure long-term adequacy of electricity, also putting great stress on flexibility of the system. Through the revision of the capacity adequacy mechanism modern market conditions with multiple producers and unbundled network operators shall be taken into account, on the basis of relevant EU documents such as: Commission Communication "Delivering the internal electricity market and making the most of public intervention" [C(2013) 7243 final/5.11.2013], the working document "Generation Adequacy in the internal electricity market - guidance on public interventions" [SWD(2013) 438 final/5.11.2013], and the Commission Communication "Guidelines on State aid for environmental protection and energy 2014-2020" [2014/C 200/01]. The final date for submission of comments in the context of the public consultation is set for 8 September 2014. Moreover, in order to address the imminent danger of problems in the operation of gas-fired units due to eventual natural gas supply disruptions as a result of the current political crisis, RAE also issued Decision no. 343/2014 ordering the Greek TSO to conclude contracts with PPC as regards three old oil plants which shall remain in cold reserve for strategic reserve purposes for the period 2014-2015.



### **Ukraine: Reform in Management of the Unified Gas Transmission System**

*by Alina Karas (Kiev)*

On 14 August 2014, the Parliament of Ukraine adopted the Law 'On the Amendments to the Laws on Reform in Management of the Unified Gas Transmission System of Ukraine'. The Law was drafted with the purpose to implement provisions of the Directive 2009/73/EU and Regulation 715/2009 and attracting investments into Ukrainian Gas Transmission System (GTS). The Law stipulates the division of functions of the GTS Operator and Gas Storage Facilities (GSF) Operator. The amendments provide for the possibility for a private company/ies to lease assets of the Ukrainian GTS and GSF. The lease agreement will be for an agreed period of time and the assets should not be further disposed. Pursuant to the Law, the GTS Operator shall be founded solely by the State

of Ukraine (including through NJSC 'Naftogas of Ukraine') or by the State of Ukraine (including through NJSC 'Naftogas of Ukraine') owning 51% of the shares and a private company owning 49%. This private company should have its seat in the EU, the USA or a Member of the Energy Community, be an operator of a gas transmission system or a member of the Gas Transmission Europe, be certified in accordance with article 10 of Directive 2009/73/EC, and have at least 5 years experience in management of a gas transportation system in the European or American market. As to the GSF Operator, it shall also be founded solely by the State of Ukraine or by the State of Ukraine (owning 51% of the shares) and a private company (owning 49%). Only companies with their seat in the EU, the USA or a Member of the Energy Community may become shareholder of the GSF Operator. The private companies, future co-owners of the GTS and GSF Operators, shall be chosen in a tender procedure to be organised by the Government and after that approved by the Parliament.

### Croatia: Tender for the On-Shore Exploration and Exploitation of Hydrocarbons

*by Sanja Tolj Par (Zagreb)*

On 18 July 2014, the Government of Croatia issued the Tender on the Onshore Licensing for the Exploration and Production of Hydrocarbons, pursuant to the Exploration and Exploitation of Hydrocarbons Act (Official Journal 94/2013 and 14/2014) and the Governmental Ordinance Class: 022-03/14-04/267, of 10 July 2014, on public tenders for on shore exploration and exploitation of hydrocarbons. The tender refers to the area alongside the Drava River, the Sava River and the area of eastern Slavonia, covering a territory from 2,100 km<sup>2</sup> to 2,600 km<sup>2</sup>, divided into six sections. The tender will be open until 18 February 2015 while the first concessions are expected to be granted no later than 18 June 2014. The License for exploration and exploitation will be issued for up to 30 years while the exploration period may last no more than 5 years. The intention is that local government(s) benefit from these Concessions by receiving fees for exploitation amounting to 400HRK/km<sup>2</sup> per year and compensation amounting to 5% of the market value of hydrocarbons obtained from the investors. Furthermore, the State shall retain 59% of gas and 57% of oil declared as commercial discovery. Until now, the Data Room has been visited by three companies, and twenty more companies announced their intention to visit it.

### EU: Commission Published a Study on Civil Liability for Offshore Oil and Gas Activities

*by Mira Todorovic Symeonides (Athens)*

On 14 August 2014 the European Commission (Commission) published a study - the Civil Liability, Financial Security and Compensation Claims for Offshore Oil and Gas Activities in the European Economic Area. The study reviews legal regime of 20 Member States and European Economic Area States (the Target States), which are carrying out or planning to carry out offshore oil and gas operations, particularly focusing on the effectiveness of liability regime, handling of compensation claims and financial security instruments for compensation of damage. It reports that while all Target States have effective liability regimes for compensation of employees, the third party claims for traditional damage for harm from release of oil, gas or other dangerous substances are mostly regulated by the general provisions on torts; in this regard some laws exclude pure economic loss in the absence of bodily injury or property damage (which is highly relevant for these types of accidents) while the Tort Law in some Target States recognises only direct claims but not remote claims (which could be understood to mean e.g. damage on



tourism); most Target States require proof of negligence for all claims for traditional damage while the strict liability exists for so-called dangerous activities that are not further specified and are subject to interpretation. Referring to the required financial security instruments concerning compensation for claims, significant number of the Target States have only one preferred mechanism for such claims - insurance, while on the other hand, applicants for the exploration and exploitation license may choose from the range of financial security instruments for meeting of license or contractual obligations, such as bank guarantees, performance bonds, insurance and parent company quarantines.

The conclusion of the study is that in case of a major accident in offshore oil and gas operations in the EU waters there is currently no liability in many Target States for most of third party claims, no regime in majority of Target States to handle compensation payment and no assurance for adequate financial assets to meet such claims.

### **Greece: The 2nd International Licensing Round of the Tender for the Offshore Exploration and Exploitation of Hydrocarbons in Greece**

*by Georgia - Ilianna Karamani (Athens)*

On 8 August 2014, a call for the 2nd International Licensing Round of the Tender for the Exploration and Exploitation of Hydrocarbons Offshore in Greece was published in the Greek Official Journal, no. B 2186/2014, in the context of the relevant decision of the Minister of Environment, Energy and Climate Change made on 31 July 2014. Through the said tender interested parties are invited to apply for granting and using authorisations for the exploration and exploitation of hydrocarbons in twenty (20) marine areas in Western Greece (Ionian Sea) as well as in the area southern of Crete. The Notice of the Call, as published, sets a tentative timeframe, whereby the application deadline ends six (6) months after the publication of the Notice of the Call in the Official Journal of the European Union, the period of evaluation of the applications ends three (3) months thereafter and the Lease Agreement execution is carried out three (3) months after the evaluation is completed. The licensing round falls within the scope of the Hydrocarbons Law no. 2289/1995 and Presidential Decree No.127/1996 titled "Lease terms of the right for exploration and exploitation of Hydrocarbons", as well as all relevant legislation. After the selection procedure is over, the Hellenic Republic will conclude separate Lease Agreements with the Selected Applicant for each Block. All exploitation and exploration activities must be developed in accordance to the European Legislation on energy and environment, which includes conducting an Environmental Impact Assessment (EIA), as also required by the Greek law on environmental licensing (Law 4014/2011). The granting of the environmental license is necessary for the construction and operation of the projects to commence. It must also be mentioned that the Ministry, along with Petroleum Geo-Services (PGS), undertook extensive seismic survey in the said area and both the relevant geophysical data and the interpretation report are available by PGS.

### **Greece: Competition Commission Approves DEPA's Proposal on e-Auctions**

*By Mira Todorovic Symeonides (Athens)*

On 21 July 2014, the Hellenic Competition Commission (HCC) adopted a proposal of the Greek major natural gas supplier DEPA to amend its own commitments concerning the supply of natural gas through electronic auctions, which were adopted by HCC's earlier decision no 551/VI I/2012. These amendments aim to provide more efficient functioning of the electronic auctions, as well as to increase the participation and competition in Greek natural gas

supply market. The amendments include DEPA's commitment to organise annual auctions of natural gas, in addition to the current quarterly auctions, by 14 October every year; in the first annual auction, to be organised by 15 October 2014, DEPA will make available 50% of the total quantity of gas scheduled for the auctions for 2015; the rest of the quantities shall be made available through the quarterly auctions; depending on the demand of the supplies and customers, the HCC will, upon proposal of DEPA, further examine the increase up to 60% of the quantities offered on the annual auctions and the gradual increase of the total quantities offered through e-auctions above the current 10% of the quantities it supplied to its customers in the previous year; the initial auction price shall be based on the long term DEPA's import contract, increased by the respective costs including operations costs of DEPA, and shall be controlled and certified by the Greek Energy Regulatory Authority; from 1 January 2015 DEPA will make all auction quantities available at the Virtual Trading Point of the Greek Gas Transmission System Operator; the take-or-pay provision will apply to all participants in annual and quarterly auctions; further, DEPA has undertaken not to request any letter of guarantees for the annual auction participants in cases when the letters of guarantees they already submitted in regard to their supply agreements cover the quantities purchased in the auctions within the course of duration of such letter of guarantee. The HCC shall also further examine the possibility of short term products through monthly or daily auctions, the possibility of redesigning of products offered on the auctions based on the characteristics and demands of categories of participants as well as limiting the participation in annual auctions only to the suppliers, as proposed by the Energy Regulatory Authority.

### Montenegro: The Parliament adopted the Law on Hydrocarbons Tax

*by Dejan Radinovic (Podgorica)*

On 16 July 2014, the Parliament of Montenegro adopted the Law on Hydrocarbons Tax, which introduces a tax levy and creates a tax policy on profit gained from extracting oil and gas, and from the construction or use of facilities and related equipment for production, delivery and transport of oil and gas. This tax excludes the general corporate income tax at the rate of 9%. The tax rate of hydrocarbon companies' corporate tax is fixed at 54% for all upstream operations. Upstream operations shall be considered as activities related to the extraction of hydrocarbons from deposit, construction or use of plant and ancillary equipment for the production and delivery of hydrocarbons, including exploration, drilling, production, transportation and use of oil and gas for hydrocarbon production and other activities associated with upstream operations, except for the transport of hydrocarbons by rail, aircraft, road vehicles or vessels. The tax base for hydrocarbons is the difference between the income generated from the upstream operations and recognised expenditures. Income from upstream operations consist of : income from production, transportation, processing and/or sale or realisation of hydrocarbons; income from interest and other financial income, foreign exchange differences and financial gains from upstream operations; income from realisation of fixed assets acquired for use in activities related to the upstream operations; the market value of the fixed asset, which ceased to be used for upstream operations; funds remaining on a special account for decommissioning (Decommissioning Funds) after the facilities' decommissioning process has been completed in accordance with the Law; the value of the stock of hydrocarbons. Expenditures from upstream operations are capital costs, operating costs, the funds paid into the Decommissioning Fund, and costs of financing. The due amount is to be paid quarterly, in advance. Revenues from taxes on hydrocarbons are shared between the State Budget of Montenegro and the Fund for hydrocarbons, which should be regulated by a separate law to be submitted to the Parliament until the end of 2014.



## **Romania: State Aid Scheme on Exemption of Certain Consumers Categories from the RES Levy**

*by Corina Badiceanu (Bucharest)*

On 4 July 2014, a Government Decree on the approval of a state aid scheme regarding the exemption of certain categories of end consumers from the application of the Law 220/2008 on the system of promotion of energy produced from renewable energy sources was published in the Official Journal under the number 495/2014. The Government Decree entered into force on 1 August 2014. The Decree provides a 10 year-period of availability of the state aid scheme, the conditions under which the scheme will function, and also the eligibility criteria that must be met cumulatively by the beneficiaries when applying for the scheme, such as keeping the business in Romania during the state aid scheme, a lay off of more than 25% of the number of employees that the beneficiary employed when qualifying for the scheme not being possible, and the assurance of an independently energetic audit made by approved experts. The Decree is intended to help the companies that belong to sectors exposed to the risk of losing competitiveness as stated in the European “Guidelines on environmental and energy aid for 2014 -2020”.

## **EU: The European Commission’s Staff Working Document on the State of Play of the Sustainability of Solid and Gaseous Biomass**

*by Georgia - Ilianna Karamani (Athens)*

On 28 July 2014, the European Commission issued a Staff Working Document on the State of play of the sustainability of solid and gaseous biomass for electricity, heating and cooling production in the EU. On the European Parliament’s request and in the context of the EU’s 2020 renewable energy targets, the European Commission, issuing this Staff Working Document, updated the values and methodology defined in the relevant Commission’s Report of 2010 (COM (2010)11). On the grounds that solid and gaseous biomass used for electricity, heating and cooling production is the biggest source of renewable energy in the EU and that, due to the increasing biomass demand, imports are expected to multiply, various concerns arose in reference to internal market and sustainability issues. According to the Commission’s Staff Working Document, any probable risk of market distortion as a result of the national sustainability regulations can be managed through the existing EU tools on technical standards, given that only a limited number of Member States have adopted broadly consistent sustainability schemes and no apparent internal market barriers have been identified so far. The most important sustainability risks of large-scale biomass production and use of energy are being mentioned, as well as the way they are currently addressed on EU level. Such sustainability risks include: unsustainable feedstock production, emissions from land use, land use change and forestry, lifecycle greenhouse gas (GHG) emission performance,



indirect impacts, inefficient bioenergy generation and air emissions. Moreover, the Commission underlines that further research and analysis is required to assess the role of biomass pathways that can lead to negligible or negative GHG savings or other sustainability impacts.



## ENERGY EFFICIENCY

### **EU: Poland and Austria before the European Court of Justice for Failure to Implement the Directive on the Energy Performance of Buildings**

*by Michal Trzoska (Warsaw)*

On 10 July 2014, the European Commission announced initiation of procedures to refer Poland and Austria to the Court of Justice of the EU for failure to implement the Energy Performance of Buildings Directive 2010/31/EC (the Directive). EU Member States (MS) had a deadline to transpose the Directive and particularly to identify and apply the minimum energy performance requirements for all buildings that have an impact on long-term energy consumption, until 9 July 2012. The MS should also have ensured certification of buildings' energy performance and require regular inspection of heating and air conditioning systems. The consumers' right to receive information about a building they want to buy, rent or build should also be ensured. In addition, the MS should ensure that by 2021 all new buildings are nearly zero-energy buildings. In both Poland and Austria the transposition of the Directive has still not been completed, particularly in regard to the energy certificates, minimum energy performance requirements and nearly-zero energy buildings. The European Commission proposes daily penalties to the two countries in the amount of € 96,720 per day for Poland and €39,592.80 per day for Austria. The difference in the amount of penalties is due to the different duration and gravity of the infringement. In April 2014, the European Commission brought proceedings against Finland and Belgium for breaching of the same Directive. Currently it is assessing the situation in Slovenia, the Netherlands, Luxembourg, Italy and the Czech Republic in regard to their compliance with the Directive.

### **Energy Community: Energy Efficiency Directive Implementation**

*by Marina Aliferopoulou (Athens)*

On 2 July 2014, the Energy Efficiency Coordination Group (EECG) brought together energy efficiency experts from the Contracting Parties, Georgia (a candidate country), EU institutions and the Energy Community Donors Community. As set in its work programme 2014, the group focuses on the implementation of the energy efficiency acquis and cooperation with donors on assistance programmes and investment projects in the Energy Community. The EECG discussed the preliminary results of an Energy Community study assessing the impact of the adoption of Directive 2012/27/EU on energy efficiency by the Contracting Parties. The Group generally welcomed the

progress achieved in the monitoring and implementation of the Contracting Parties' Energy Efficiency Action Plans. However, it also urged the Governments of Albania, Bosnia and Herzegovina, Macedonia and Ukraine to adopt these important strategic documents as soon as possible. All participants, especially all donors present at the meeting, expressed strong support for extending the Group's mandate, which is set to expire at the end of this year. The Permanent High Level Group will decide on the extension at its meeting on 22 September 2014.

On 23 July 2014, the Study "Impact Assessment of the Energy Efficiency Directive (2012/27/EU) for the Energy Community", which was commissioned by the Energy Community Secretariat, was published. The key conclusions and recommendations were: (a) implementation of the Directive is feasible for the Contracting Parties, but the level of the target to be achieved can have a significant impact on the energy system cost. The energy efficiency targets in the range of 18% by 2025 and 25% by 2030 in final energy consumption are recommended for adoption as the most-effective of the targets considered, (b) renovation of central buildings is beneficial for the Contracting Parties, but government ownership of buildings is still far larger in comparison to EU Member States, therefore, a 2% renovation goal is recommended as being the most appropriate approach for the Contracting Parties, (c) supplier obligation was recommended to follow the 1.5% annual end-use energy savings rate because the incremental national cost is insignificant in light of the overall energy efficiency target savings, (d) adoption by investors of cost-effective combined heat and power options will be beneficial to the Contracting Parties in the long run. The cost of administering the programme and preparing the cost-benefit analysis is small compared to these benefits. The threshold for the total thermal input of energy technologies should be set at 20MW.

## **EU: Commission Proposes Higher and Achievable Energy Savings Target for 2030**

*by Marina Aliferopoulou (Athens)*

On 23 July 2014, the European Commission released a new Communication on Energy Efficiency (the Communication) to the European Council which proposes mid and long-term objectives for the EU's energy efficiency policy after assessing progress towards the 2020 energy efficiency target and proposing a new 30% target for 2030. The European Council is scheduled to take a final decision on the new climate and energy policy framework at its meeting on 23/24 October 2014. The Communication highlights many benefits that have come as a result of the EU's drive towards greater energy efficiency. For instance: (a) energy intensity in EU industry has decreased by almost 19% between 2001 and 2011, (b) more efficient appliances like refrigerators and washing machines are expected to save consumers €100 billion annually – about €465 per household – on their energy bills by 2020, (c) new buildings consume half as much energy today as they did in the 1980s. The EU's new 30% target for 2030, if accepted, would provide the following long term benefits: reduce energy prices, ensure security of supply, and improve the lives of Europeans in a variety of ways: (a) for every additional 1 percent in energy savings, EU gas imports are expected to fall by 2.6%, decreasing EU dependence on external suppliers, (b) more energy efficient buildings will offer "ancillary benefits" to people who live and work in them in addition to reducing their energy bills, for example, better windows can provide for increased air quality and protection from external noise, (c) energy efficiency policies will create new opportunities for European business such as construction firms

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and equipment manufacturers. The European Commission proposes to review progress on energy efficiency in 2017.

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