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## Serbia: Draft of New Energy Law Introduced for Public Consultation

by Vuk Stankovic (Belgrade)

In the last week of December 2013, the Ministry of Energy, Development and Environmental Protection (hereinafter: the Ministry) presented a draft of the new Energy Law (hereinafter: the Law) for public consultation, which is intended to be held until 1 February 2014. The Law is intended to be the final step in a chain of acts and amendments aiming at overall compliance with the EU energy regulatory and market rules. The key amendments refer to: simplification of all licensing procedures, establishment within the Ministry of an Inspectorate for Energy Supervision, while the present Trade Inspectorate shall also have some inspection competencies; significant increase of the competencies of the Serbian Energy Agency (hereinafter SEA), which, among other duties, will be in charge for dispute resolution between energy entities, controlling energy entities regarding market operating, monitoring the separation of accounts of the licensed entities and monitoring the TSO unbundling procedures as regulated by the Law.

Some major changes per energy sector are: Electricity: the Law defines the small customers in order to reduce the number of customers eligible for public supply. RES: The possibility for obtaining the status of privileged producers shall be extended to all RES producers and producers of thermal energy. However, combined generation (thermal-electro) shall not be considered as privileged for its thermal part. Bank guarantee shall not be required any more for the construction of facilities with less than 100 Kw of installed capacities. Oil & Gas: In the gas sector the amendments refer to the mandatory gas stocks and the unbundling requirements, while in the oil sector to private oil stocks established for own needs. Energy markets, infrastructure and grids: Market rules shall suffer minor changes in order to prepare Serbia for improving cross-border allocation of capacities towards EU Member States and participation in the European energy market. Parallel to the existing DSO, a new Closed Distribution System Operator (hereinafter CDSO) is set to be established in free economic zones in order to distribute electricity to the system operator or its affiliated companies without the possibility to distribute to the household customers. Similarly, the Law provides for the establishment of a CDSO also in the gas sector, intended to distribute natural gas in zones of economic interest. Licensing: The Law introduces new energy activities related to the oil sector whereas for some of them no license is required any more. For the petroleum stations constructed until 2009, licenses may be issued without submission of construction permit. In regard of the permitting process for energy facilities that are constructed on the basis of a concession, no energy permit shall be required.

## Montenegro: Set of Rulebooks and Regulations

by Mira Todorovic Symeonides (Athens) & Dejan Radinovic (Podgorica)

On 26 and 30 December 2013 the Montenegrin Energy Regulatory Agency passed several rulebooks and regulation, particularly regarding the electricity supply through direct lines and the granting of energy licenses, which were all published in the Official Journal of Montenegro no. 61/13 as of 30 December 2013. The issue of supply through direct lines is regulated by the Rulebook on the conditions for granting approvals to producers and suppliers of electricity to supply eligible customers through direct lines; an eligible customer may offtake supply through a direct line in case that due to the lack of capacity it cannot receive supply from the transmission or distribution system; the purpose of the Rules is to ensure security and quality of supply for the eligible customers through direct lines on similar principles to those for the transmission or the distribution system. The Agency also issued the Methodology for calculation of the fees for using the transmission or distribution system paid by the users of direct lines when connected to the transmission or distribution system as well as the new Rulebook on the method and conditions for granting, amending and withdrawing energy licenses repealing the related Rulebook from 2010.

## EU: Implementation of the Third Energy Legislative Package: ACER/CEER Annual Report

by Anna Maria Philippa (Athens)

The Agency for the Cooperation of Energy Regulators (ACER) – Council of European Energy Regulators (CEER) joint annual report for 2012 (uploaded in December 2013) provides an assessment of the EU's Internal Energy Market (IEM), mainly in relation to (a) retail prices, particularly under the prism of the third energy legislative package's demands for compliance with consumer rights (Directive 2009/73/EC), (b) network access, including grid access for renewable energy, and (c) determination of the barriers to the IEM. With regard to retail market the main findings are that there is an unchanged electricity demand, whereas there is a decrease in gas demand, while there has been a considerable economic loss for consumers since gas prices rose by 10% and electricity prices by 4.6%. There is no significant retail competition and consumer choice because there are still important barriers to new entrants in most MSs such as regulated retail prices that are still prominent. Emphasis has been given on the need for opening the wholesale market and a point has been made that the gas market is less controllable by the EU and more vulnerable to international developments than the electricity market. Finally, according to ACER, the major barriers to entering retail markets are: illiquid and/or concentrated wholesale markets; consumer switching behaviour; retail price regulation; and the regulatory framework. In order to remove such barriers ACER's finds that wholesale markets should open up by full enactment of the 3rd Package, infrastructure should be optimised, transportation costs minimised and cross-border trade should be maximised at minimum cost, switching costs should be also minimised, a move should be made towards free retail markets, and regulations must be enforced that will allow for potential new or smaller entrants by suppressing monopolistic network behaviours.

## EU: The new 2030 Framework on Climate and Energy Proposed by the Commission

by Mira Todorovic Symeonides (Athens)

On 22 January 2014 the Commission proposed a policy framework for climate and energy in the period from 2020 to 2030 and communicated it to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. This Communication was accompanied by the Commissions Recommendation on the Minimum Principles for the Exploration and Production of Hydrocarbons (such as shale gas) using High Volume Hydraulic Fracturing regarding the safe and environmentally secure exploitation of shale gases.

The Communication presents critical analysis of the goals achieved from 2008, the current status of the energy markets and proposes the new targets and reforms. The key elements for the new framework proposed by the Commission are: a) to set a greenhouse gas (GHG) emission reduction target for domestic EU of 40% in 2030 relative to emissions in 1990, which would be binding for the Member States (MSs); the EU level target must be shared between the Emission Trading System (ETS) and non-ETS so that the ETS sector would have to deliver a reduction of 43% in GHG in 2030 and the non-ETS sector a reduction of 30% both compared to 2005; b) to increase the European level for renewable energy share in energy consumed in EU to at least 27% but not as a binding target for MSs included in their legislation; the goal should be accomplished through the MSs' commitment to GHG reduction targets and other measures on national and EU level; c) to increase the level of energy savings; the Commission's analysis shows that a greenhouse gas emissions reduction target of 40% would require an increased level of energy savings of approximately 25% in 2030; d) to reform the ETS by establishing a market stability reserve at the start of phase 4 trading in 2021; it has already proposed to postpone auctioning of 900 million emission allowances until 2019/2020 and the European Parliament and the Council agreed to this proposal in December 2013; and e) to amend system and European governance processes for establishing of MSs plans for competitive, secure and sustainable energy. These plans should set out the approach for achieving the MSs' objectives regarding GHG emissions, RES, energy savings, energy security, research and innovation and other MSs' options such as nuclear energy, shale gas, carbon capture and storage. A three-step procedure will be followed: the Commission develops detailed guidance for the plans, MSs prepare the plans and finally the plans are assessed by the Commission as to their sufficiency to achieve the goals.



## Ukraine: Reform of the Ukrainian Electricity Market

by Alina Karas (Kiev)

The first day of the year 2014 brought to Ukraine the enforcement of the Law no. 663-VII/2013 on the Principles of Operation of the Electricity Market in Ukraine (hereinafter – the Law) which determines a new model of operation of the Ukrainian electricity market. The scope of the Law is to enhance the liberalisation of the wholesale electricity on the basis of fair competition, transparent and non-discriminatory access to transmission and distribution networks of Ukraine; to facilitate free choice of suppliers; and to establish non-discriminatory pricing and tariffs' principles for

all participants in the electricity market with the aim to fulfill the obligations imposed by Directive 2003/54/EC and Regulation (EC) No 1228/2003, undertaken by Ukraine by joining the European Energy Community. The transitional period for implementation of all provisions of the Law will last until 1 July 2017.

The key amendments are: a) New electricity market model based on bilateral contracts which shall replace the current single buyer's system; day-ahead market; balancing market; ancillary services market and retail market; b) New types of licensed activities such as license for system operator activity; operator of day-ahead market activity and guaranteed buyer activity in addition to the previously regulated generation, transmission, supply and sale of electricity licenses; c) Unbundling of transmission and distribution system operators through independent management and decision making and d) Guarantees for renewable energy producers; the Law regulates the funding of the Guaranteed Buyer for the electricity produced from RES by a state company with exclusive authority to buy at the day-ahead market RES electricity and pay the feed-in tariffs guaranteed until 1 January 2030. More precisely, the Guaranteed Buyer will be financed by the Special Cost Imbalance Allocation Fund which in turn will be financed by the big hydroelectric and nuclear power plants. The Law also provides for the compensation payable to producers for non-purchased RES electricity.

### **Bulgaria: Reduction of Energy Prices Introduced by Decision of the Energy Regulator**

*by Svetla Stoykova (Sofia)*

In response to the public expectations of end consumers the Bulgarian energy regulator, i.e. the State Energy and Water Regulatory Commission (SEWRC), approved by its Decision N LJ-43 of 30 December 2013 a reduction of prices for electricity and heating. The said decision was adopted under the accelerated procedure after public discussion held on December 27 and at only three days deadline for the submission of written objections by the participants concerned. Almost all objections were rejected as unfounded or unsubstantiated. The ultimate goal of the decision, according to the reasons for its adoption, is to ensure the highest level of consumer protection, subject to the principle of ensuring a balance between the interests of energy companies and customers. According to the SEWRC, the clarification of all facts and circumstances related to the expenses of energy companies shall provide the necessary transparency regarding the determination of the costs of all participants in the chain of generation, transmission, distribution and supply of electricity. The general approach of SEWRC consists in reducing the operational costs, which have an impact on the prices for the generation, transmission and distribution of electricity.

### **Greece: Energy Regulator Declares Itself Incompetent for the Interpretation of a Disputable Provision of the Energy Law**

*by Lazaros Sidiropoulos (Athens)*

Decision no. 664/2014 of the Greek energy regulator (RAE) was issued on 22 January 2014, ruling on a complaint filed by a Greek electricity supplier against a decision of the Greek TSO (ADMIE), by which a substantive amount corresponding to fees payable in favour of RES producers was imposed to electricity producers and suppliers. Although this is not a new fee, an amendment to the energy law (4001/2011), which was issued on 9 May 2013, changed the calculation basis of this fee leading practically to a raise of the amounts payable thereafter. In execution of this new legal provision, RAE issued on 14 August 2013 a Decision introducing respective amendments to the Greek Electricity Transaction Code, in which the aforementioned new calculation methodology is thoroughly regulated. Against this background, the Greek TSO, being the competent authority for collecting the above fee, requested on 29 October 2013 payment of the surplus arising due to the new calculation basis

retroactively since May 2013, by considering this to be having effect since the date of issuance of the amendment to the law (May 2013) and not since the date of the respective amendment to the Transaction Code (August 2013). Pursuant to the complaint, the law itself did not impose a legal provision with immediate effect, since a respective amendment to the relevant administrative decision (Transaction Code) was necessary for this purpose. By its Decision, RAE refused to take position on this issue and declared itself incompetent for interpreting whether a provision of the law may be considered to be having immediate effect or not. RAE advised the parties to address the issue before the administrative courts, which should be considered as the competent authority for the interpretation of the energy law in such issues. This Decision is of particular importance, since while pursuant to the energy law RAE is expressly designated as the competent dispute settlement authority with respect to complaints against the electricity transmission system operator on infringements of primary and secondary electricity legislation, RAE ruled in this case that the interpretation of provisions of the law on whether they have immediate effect goes beyond its regulatory competencies.



## Ukraine: Preferential Tax Treatment for Certain Projects of Production of Hydrocarbons

by Alina Karas (Kiev)

On 3 December 2013 the following three Orders of the Ukrainian Cabinet of Ministers on investments into hydrocarbons came into force: 1) The Order on the Selection of New Hydrocarbon Production Projects; 2) The Order on the Calculation of Additional Quantities of Hydrocarbons; and 3) The Order on the Monitoring of Production of Additional Quantities of Hydrocarbons Projects. By implementing the provisions of article 263 of the Tax Code regarding taxing of extracting of hydrocarbons, these Orders provide for a preferential tax treatment of Hydrocarbons Production Projects fulfilling certain criteria such as: the Project is performed by companies with direct or indirect state share of at least 25% (or subsidiaries or joint ventures of such companies) and the hydrocarbons are to be extracted from depleted fields or from difficultly accessible fields. The tax incentives apply only to the additional quantities of hydrocarbons produced by means of extractions approved for such Projects. The applicable tax in such cases shall amount to the rate of 2% of the gross value of the hydrocarbons produced according to the above, while the standard rate for oil extracted from depths over 5000 meters is 39%, for oil under 5.000 meters is 17% and for natural cases it varies from 11% to 25% depending on the oil's quality and the difficulty of extracting.

Further to the above, on 25 December 2013 the Ministry of Taxes and Duties presented a new Draft Order on Measures to Optimise the Regulation of New Investment Projects aimed to Increase Mining of Hydrocarbons" to be approved by the Cabinet of Ministers, which shall further regulate and specify the above three Orders. The Draft Order defines certain terms, such as "New Project", used in the enacted Orders, regulates issues of registering data on the mining fields, which fulfill the criteria for the tax incentives, and aims to enable access to these data by the interested parties.

## Greece: Amendments to the Gas Network Code and Introduction of Three New Standard Transmission Agreements

by Lazaros Sidiropoulos (Athens)

On 9 December 2013, Decision no. 526/2013 of the Greek energy regulator (RAE) was issued in the Official Gazette, including a series of amendments to the Natural Gas Network Code aiming at the implementation of recent relevant EU legislation, such as Regulation (EU) 715/2009, as amended, and Regulation (EU) 984/2013. Among others, following amendments were introduced: broadening of the transmission services by including interruptible and virtual transmission services, introduction of measures for the management of contractual congestion, modification of the capacity booking system and amendments to the rights of network users to apply for release of booked capacities, simplification of application procedures etc. Further to the amendments to the Network Code, on 27 December 2013 RAE's Decision 635/2013 was issued in the Official Gazette, introducing respective amendments to the existing standard natural gas transmission agreement, based on which transmission agreements between the network operator (DESFA) and network users are signed. In place of so far existing one standard agreement, three new standard agreements were introduced so as to also cover the new options for interruptible and virtual transmission services.



## EU: ACER Calls ENTSO-E to Expedite the Process of Harmonization: Opinion on ENTSO-E's Network Code on Forward Capacity Allocation

by Anna Maria Philippa (Athens)

On 18 December 2013 ACER published its opinion on the Network Code on Forward Capacity Allocation (NC FCA) which was drafted by ENTSO-E further to an invitation received by the Commission following the adoption of the Framework Guidelines on Capacity Allocation and Congestion Management for Electricity by ACER on 29 July 2011. The NC FCA provides common rules for forward capacity allocation consistent with the approach taken for the Capacity Allocation and Congestion Management Network Code. Issues covered by the NC FCA include, among others, the long-term capacity calculation process, the establishment of a single allocation platform and the allocation of long-term transmission rights. It is interrelated with all other network codes that are being developed pursuant to art. 6 of Regulation (EC) No 714/2009, aiming to introduce a common set of European market rules in view of the completion of the internal electricity market.

In its opinion, ACER requested several amendments to NC FCA to ensure full alignment with the Framework Guidelines as well as consistency with other electricity network codes. The main aspects to be amended concern the deadlines set to implement terms and conditions or methodologies and the firmness regime. In particular, regarding timelines and deadlines envisaged in the Network Code, ACER wishes that more ambitious targets regarding the implementation horizon should be set, not substantially diverging from the admittedly unachievable target of 2014 set by the European Council. Moreover, the firmness regime described in NC FCA was found to diverge from the principles of the Framework Guidelines as well as not to be sufficiently taking into account the progress achieved by some regional TSOs and national regulators through the early implementation of the electricity Target Model. Further to the above, ENTSO-E announced on 22 January 2014 its intention to amend and resubmit the NC FCA in light of the Agency's opinion.

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