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EU and EnC

Market

EU: Imposition of Fines for Violation of REMIT

by Ifigeneia Argyri (Athens)

In December 2018, two new fines were levied by the National Regulatory Authorities (NRAs) for violations of REMIT. As the competent authorities in the energy sector, NRAs are notably proceeding into investigations and imposition of fines under Regulation (EU) No 1227/2011 on Wholesale Energy Market Integrity and Transparency (REMIT) across Europe. The aforementioned Regulation prohibits market manipulation, requires effective and timely public disclosure of inside information by market participants and obliges firms that professionally arrange transactions to report the suspicious ones.

In more detail, the Spanish NRA, Comisión Nacional de los Mercados y la Competencia (CNMC) fined Galp Gas Natural S.A. (Galp) and Multienergía Verde, S.L.U (Multienergía) for market manipulation, whereas Energitilsynet, the Danish NRA, imposed a fine to Energi Danmark A/S for 10 counts of market manipulation too. It is worth highlighting that these new instances of fine imposition followed the issuing of others imposed under REMIT across Europe in 2018. To be more specific in April 2018, the Spanish NRA, CNMC, fined five companies a total of EUR 10,200 for a breach of their obligation to register as market participants under REMIT. Additionally, in May 2018 the Hungarian NRA, Magyar Energetikai és Közmű-szabályozási Hivatal imposed a fine of approximately EUR 40,000 to an organised market place for the infringement of reporting obligations under REMIT and in October 2018, the disciplinary tribunal of the French Regulatory Commission fined VITOL S.A EUR 5 million for engaging in market manipulation on the French Southern virtual Gas Trading Point. As was previously mentioned, the fines followed the issuing of two new ones announced in December 2018, as reported by the Agency for Cooperation of Energy Regulators (ACER). In more detail, Spanish NRA, CNMC sanctioned Galp and Multienergía with a EUR 80,000 and EUR 120,000 fine (respectively) for market manipulation. According to the NRA from 12 to 20 January 2017 and on 17 January 2017, Multienergía and Galp respectively secured or attempted to secure the price of several natural gas wholesale products for delivery in Spain, traded at an artificial level in breach of article 5 of REMIT. As far as the second NRA fine is concerned Energitilsynet, the Danish NRA fined Energi Danmark A/S of approx. EUR 100,000 and the Danish State Prosecutor for Serious Economic and International Crime has also seized the income of EUR 47,000 obtained through the 10 counts of market manipulation. As was reported by Energitilsynet, Energi Danmark A/S breached the prohibition on market manipulation pursuant to article 5 of REMIT by capacity hoarding, meaning that Energi Danmark A/S hoarded capacity on the electricity interconnectors by trading with itself thus managing to exclude third party traders and consequently hinder competition. This behaviour led to or could have potentially led to the creation of misleading or artificial prices on the intraday wholesale market for electricity.

The constant increase of NRA imposed fines shows that NRAs are determined to monitor, investigate and enforce breaches of REMIT. As a result, Energy companies should expect increased control from NRAs, considering that liberalised energy markets are prone to manipulation and energy regulators step up investigations and fines into such perceived activities. Finally, it should be mentioned that breaching the REMIT prohibition on market manipulation does not necessarily require that the market participant intends to do so; a market participant can be found in breach of the market manipulation prohibition by entering into any transaction or by issuing an order to trade that gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of wholesale energy products – i.e. it is an objective test. However, where intention can be established, a market participant can be found to be in breach of both actual and attempted market manipulation, as the latter requires an intention to do so. Finally, it is worth to be highlighted that the scope of REMIT is critical to avoiding investigations and fines, and protecting corporate reputation.

EnC: Decision D/2018/10/MC-EnC implementing Regulation (EU) 1227/2011

by Ifigeneia Argyri (Athens)

On 29 November 2018, the Ministerial Council of the Energy Community (EnC) issued its Decision D/2018/10/MC-EnC on the implementation of Regulation (EU) 1227/2011 on wholesale energy market and transparency (REMIT). The aforementioned Regulation prohibits market abuse in relation to wholesale energy products, requires effective and timely public disclosure of inside information by market participants and obliges firms that professionally arrange transactions to report any suspicious transactions. In more detail, the Decision of the EnC states that each Contracting Party shall transpose REMIT as adapted by the Decision within l2 months and implement REMIT within 18 months from the adoption of the Decision. Each Contracting Party shall notify the EnC Secretariat of the measures taken for the transposition of the abovementioned Decision, and any subsequent changes made to those measures within two weeks from the adoption of such measures. The Contracting Parties should also task the competent National Regulatory Authorities (NRAs) with the monitoring of and enforcing compliance with the Decision.

The Decision sets out both general and ad hoc adaptations. As far as the general adaptations are concerned, in article 2 of the Decision some terms referred in REMIT are replaced. As also stated, the Energy Community Regulatory Board (ECRB) shall perform the duties under REMIT in close coordination with the Agency of the Cooperation of Energy Regulators (ACER). Regarding the ad hoc adaptations, article 4 of the Decision inserts two new terms; the “critical infrastructure” and the “sensitive critical

infrastructure protection related information". Furthermore a new paragraph is added by virtue of which the Secretariat shall report on a annual basis to the Ministerial Council certain information as (indicatively) stated in paragraph 3. To that end, the remaining provisions convert the terminology referred in REMIT or remove some terms that are not applicable.

EnC: Establishment of a Cyber-security Coordination Group

by Nikoleta Nikolaou (Athens)

On 29 November 2018, the Ministerial Council of the Energy Community (EnC) released the Procedural Act 2018/02/MC regarding the establishment of an EnC's Coordination Group for Cyber Security and Critical Infrastructure. More specifically, due to the rapid reproduction of information and communication technologies concerning the energy sector, cyber security issues have undoubtedly become an inherent part of the existing EnC acquis, concerning the security of supply and safe operation of energy systems. In addition, the Procedural Act refers to the organizational structure, activities and responsibilities of all the Contracting Parties while also stating that the Cyber Coordination Group ('Cyber CG') aims to support and facilitate strategic cooperation and exchange of information within the EnC and establish a high level of network and critical infrastructures' security.

Moreover the decision describes the most significant obligations of Cyber CG, such as providing strategic guidance for the aforementioned activities, exchanging best practices and information, examining the submitted reports, promoting the implementation of security requirements of network and information systems etc. Additionally, a network of Computer Security Incident Response Teams (CSIRTs) is established in order to promote rapid and effective operational cooperation in cases of dangers or incidents in regards with information and communication. In other words, the aforementioned network is among others responsible for exchanging information on CSIRT's services, operation and cooperation capabilities, informing the Cyber CG of its activities, discussing lessons learnt from exercises concerning the security of network etc. In conclusion, the Procedural Act defines that by 1 July 2019 the Cyber CG shall investigate options both for Contracting Parties and the Secretariat, in order to engage as an observer on issues relating to cyber security in Network Energy and also take part in the international activities organized by the European Union Agency for Network and Information Security.

EU: Regulation 2018/1999 on the Governance of the Energy Union and Climate Action

by Nikoleta Nikolaou (Athens)

On 21 December 2018, Regulation (EU) 2018/1999 was published in the Official Journal of the EU. It sets out the appropriate legislative foundation for reliable, cost-effective, transparent and predicable governance of the Energy Union and Climate Action, with scope to ensure the achievement of the 2030 long-term goals of the Energy Union. In accordance with the Regulation, the Energy Union should cover five different dimensions: energy security; internal energy market, energy efficiency, decarbonisation, and research, innovation and competiveness. The Regulation establishes a mechanism to: Implement strategies and measures designed to achieve goals of the Energy Community; stimulate cooperation between Member States; ensure the transparency and accuracy reporting by the Union and its Member States; and contribute to greater regulatory certainty. This mechanism is based on long-term strategies, national energy and climate plans covering ten-year periods starting from 2021 to 2030.

Furthermore, Member States shall cooperate with each other, taking account of all existing and potential forms of regional cooperation to achieve the goals set out in their integrated national energy and climate plan effectively. Every two years each Member State shall report to the Commission on the status of implementation of its integrated national energy and climate plan by means of an integrated national energy and climate progress report covering all five dimensions of the Energy Union. Where the Commission concludes that insufficient progress is made by a Member State, towards meeting its objectives, it shall issue recommendations to the Member State concerned.

Electricity

EU: Opinion of the Advocate General on Electricity Export Charges in Case C-305/17

by Paraskevi Res (Athens)

The Advocate General Sharpston delivered an opinion on 5 July 2018 on Case C-305/17 (FENS spol. s r.o. v Slovenská republika - Úrad pre reguláciu sieťových odvetví) on the request for a preliminary ruling from the District Court Bratislava II, Slovakia (the National Court) to the European Court of Justice (ECJ). This preliminary ruling concerns one of the pillars of the internal market, namely free movement of goods. The Advocate's General questions relate to the core of the internal and external dimensions of that freedom — the customs union. The EJC on this case revisits two classic elements of the internal market: a) charges having an equivalent effect to customs duties and b) the rules on internal taxation, in the specific context of the electricity market.

More specifically, in the case at hand the national law of Slovakia provided that when electricity was exported, the exporter had to pay a charge for the network services, unless it could prove that the electricity exported had previously been imported into what the legislation named "the specified territory". A supplier in the Slovakian electricity sector concluded with a Slovak company involved in the electricity manufacturing sector a framework contract for the sale and purchase of electricity. The supplier concluded a transmission agreement with a

Slovak company concerned with the national electricity transmission network for the transmission of electricity via the interconnection lines and the management and provision of transmission services. This agreement provided for the supplier to pay an amount in the form of a charge for the provision of network services for the export of electricity according with Article 12(9) of the Electricity Regulation on the charge for the export of electricity from the territory of the Slovak Republic, regardless of whether that electricity is exported from Slovak territory to a EU Member States or to third countries, unless it could demonstrate that the electricity exported had first been imported into Slovakia. The supplier requested from the TSO the suspension of the charge and refund for the amounts paid, but the TSO refused its request. The supplier brought an action for damages against the Regulatory Office for Network Industries (hereinafter the "ÚRSO"), stating that the charge for the provision of network services is a charge having an equivalent effect to a customs duty levied exclusively on electricity produced in Slovakia that was exported and not on electricity that had previously been imported into Slovakia and then re-exported. The ÚRSO maintained that the charge at issue was temporary and that its purpose was to guarantee the operational security, reliability and stability of the Slovak energy network. Because this action was dismissed, the supplier appealed before Regional Court of Slovakia, which annulled that judgment and remitted the case to the District Court of Bratislava II, Slovakia, (Referring Court), which requested the EJC a preliminary ruling in order to ascertain whether Article 12(9) of the Electricity Regulation is compatible with Articles 28 (the principle of free movement of goods) and 30 TFEU (on the prohibition between Member States of imposition of customs duties on imports and exports and charges having equivalent effect). Taking into consideration Directive 2003/54, which provides that Member States designate TSOs who can adopt non-discriminatory rules for balancing the electricity system and for charging of network users for energy imbalance and that the regulatory authorities are responsible to set the methodologies used to calculate transmission tariffs, the Advocate General considers the harmonisation brought about by this Directive was not such as to preclude an examination of whether the national legislation is compatible with Articles 28 and 30 TFEU. On the other hand, taking into account that Article 5 of Directive 2005/89, invoked by the Slovak Government refers to the adoption of "appropriate measures" to define transparent, stable and non-discriminatory policies on security of electricity supply compatible with the requirements of a competitive internal market for electricity by the Member States, the Advocate General concludes that the Slovak Government's submissions on the harmonisation of national law with Directive 2005/89 should be rejected and this harmonization was not such as to preclude an examination of whether national legislation is compatible with the provisions of primary law and, in particular, with Articles 28 and 30 TFEU. The EJC has held on Article 28 TFEU that both the unity of the EU customs territory and the uniformity of the common commercial policy would be seriously undermined if the Member States were authorised unilaterally to impose charges having equivalent effect to customs duties on *imports* from third countries. That also applies to charges having an equivalent effect to customs duties on *exports* to third countries. On the issue of whether this charge has an equivalent effect to customs duties, the Advocate General states that this charge is classified as charge having an equivalent effect to export duties on exports to third countries and is prohibited regardless of whether it concerns exports to Member States or to third countries. The advocate points out that this charge levied on all electricity consumed in Slovakia, whether produced domestically or imported, but in the case of electricity that is exported, levied only for a short period of time and only on electricity that is produced domestically, is a charge having an equivalent effect to a customs duty. Also, in order for the charge to fall out with Article 30 TFEU, the service rendered must confer a specific benefit on the individual exporter, which is too general in nature and difficult to assess to be regarded as the consideration for a specific benefit actually conferred.

Therefore, the Advocate General proposes the Court to answer the questions referred by the National Court taking into consideration that a charge levied on domestically produced electricity by reason of the fact that it crosses the national frontier, is prohibited because it is a charge having an equivalent effect to customs duties on exports falling within the scope of Article 30 TFEU, when it applies to trade between Member States. That charge is likewise prohibited in respect of exports to third countries, since such charges fall within the exclusive competence of the EU pursuant to Articles 3(1)(a) and (e), 28(1), 206 and 207 TFEU. The Opinion of the Advocate General was adopted by the Court in its Judgement dated 06.12.2018.

EnC: Establishment of Coordination Group of Electricity DSOs

by Andriani Kantilieraki (Athens)

On 29 November 2018, the Ministerial Council of the Energy Community (EnC) Secretariat issued the Procedural Act 2018/01/MC in regards with the establishment of a Coordination Group of the EnC Distribution System Operators for Electricity (ECDSO-E). The Ministerial Council took under consideration the Treaty Establishing the EnC and provisions of Directive 2009/72/EC concerning common rules for the internal electricity market, as well as the fact that the ECDSO-E coordination group has already been informally established. Consequently, the Ministerial Council adopted its Procedural Act, thus formally establishing the ECDSO-E coordination group with the view of facilitating the development of investments in the energy network and the establishment of uniform rules ensuring stable and continuous energy supply and provision of energy to citizens. ECDSO-E is established as a group of experts from electricity distribution network operator (DSO) undertakings in the EnC Contracting Parties whereas it comprises of the ECDSO-E Coordination Group plenary, ECDSO-E Task Forces and technical networks. The main tasks of ECDSO-E's group are mostly relevant to the effective transposition and implementation of the EnC Treaty and Directive 2009/72/EC. It should finally be noted that the Procedural Act is addressed to the Contracting Parties to the EnC and shall enter into force on the day of its adoption.

EU: ECJ Ruling Regarding the Closed Distribution Systems (C-262/17, C-263/17, C-273/17)

by Andriani Kantilieraki (Athens)

On 28 November 2018, the European Court of Justice (ECJ) issued its judgment upon requests for a preliminary ruling by the regional administrative court of Lombardy (Italy) on joined cases C-262/17, C-263/17 and C-273/17 between Solvay Chimica Italia SpA and others versus the Italian Regulatory Authority for Electricity, Gas and Water (AEEGSI). The requests for a preliminary ruling concerned the interpretation of Directive 2009/72/EC on common rules for the internal market in electricity and repealing Directive 2003/54/EC. More specifically, the case was brought to the attention of the ECJ when the Italian Regulatory Authority imposed certain obligations on closed distribution network operators.

Under such circumstances, the Court was called upon to specify the scope of the provisions of article 28 of Directive 2009/72 i.e. to interpret the concept of electricity 'closed distribution systems'. The Court was further asked whether operators of closed distribution systems are required to provide open access to third parties, and whether they may be exempted from obligations other than those referred to in article 28 of Directive 2009/72. Finally, it was asked whether users of closed distribution systems may be subject to the rules applicable to users of the public network in respect of dispatching charges.

The Court held that the proper interpretation of articles 2 and 28 of Directive 2009/72 leads to the conclusion that small systems (such as the ones in the cases) created and operated by a private person (or entity) for the purpose of self-generation, to which a limited number of generation and consumption units are connected, and which in turn are connected to the public network, constitute electricity networks, and thus "distribution systems" for the purposes of that Directive. The Court further held that Member States may exempt a distribution system from obligations provided for by Directive 2009/72 only if that system qualifies as a closed distribution system within the meaning of Article 28(1) thereof, but are not permitted to identify another category of distribution systems and exempt systems belonging to that category from obligations other than those from which closed distribution systems may be exempted under the provisions of the Directive. In addition to the above, the Court ruled that Article 28(2)(b) and Article 32 of Directive 2009/72 should be interpreted as meaning that operators of closed distribution systems are required to provide third-party access, unless they lack the necessary capacity. Finally, the Court highlighted the fact that articles 15(7) and 37(6)(b) of Directive 2009/72 preclude national legislation whereby dispatching charges paid by the users of closed distribution systems to the operator of the main grid are applied to electricity fed by each user into the closed distribution system, or to electricity taken by each user from the closed distribution system. Those charges should apply solely to electricity fed by each user of the closed distribution system into the main grid, or to electricity taken by each user of the closed distribution system from the main grid.

EU: European TSOs Successfully Starting the Single Allocation Platform

by Veronika Yordanova (Sofia)

On 1 October 2018, the Single Allocation Platform successfully started operation and provides long-term capacity auctions on all relevant EU borders, the Bulgarian Transmission System Operator - ESO EAD announced. In line with the timeline set by the Commission Regulation (EU) 2016/1719 on establishing a guideline on forward capacity allocation, 28 Transmission System Operators (TSOs) from 22 European countries, established the Single Allocation Platform (SAP) as of 1st October 2018. The establishment of the Single Allocation Platform is an important step towards achieving the Integrated Electricity Market. It shall promote the development of liquid and competitive forward markets in a coordinated way across Europe and shall provide market participants with the possibility to hedge their risks associated with cross-border electricity trading. Through the SAP, TSOs ensure for all market participants the provision of non-discriminatory access to long-term cross-zonal capacity at all relevant European borders, at a single place and under Harmonized Allocation Rules. To perform the role of the SAP Operator, the TSOs appointed the Joint Allocation Office (JAO, S.A.), a TSOs-owned company that is providing capacity allocation at more than 69 bidding zone borders and conducting more than 1,000 auctions in 2019 for 289 registered market participants.

Oil & Gas

EnC: Decision on the Harmonised Transmission Tariff Structures for Gas

by Anastasia Bolari (Athens)

On 28 November 2018, the Permanent High Level Group (PHLG) of the Energy Community adopted a Decision on the implementation of Commission Regulation 2017/460, taking into consideration the purpose of this Regulation, establishing a network code on harmonized transmission tariff structures for gas, including rules on the application of a reference price methodology, the associated consultation and publication requirements as well as the calculation of reserve prices for standard capacity products.

The Decision of the EnC amended the application timeframe of the Commission Regulation 2017/460.

According to the Decision, the Regulation as adapted shall be transposed and implemented by the Contracting Parties within 9 and 15 months respectively, from the date the decision was adopted (18 November 2018), while provisions of chapters II, III and IV of the Regulation, will be applied from 31 May 2021. Further to providing a longer period of transposition and implementation, the Decision modified the deadlines set in articles 13, 27, 34, 35, and 36 by extending them by two years. This means that the final date to comply

with the provisions of the Regulation for maximum level of multipliers for daily standard capacity products to no more than 1.5, is now the 1t of October 2025.

In order to comply with the article 24 of the Energy Community Treaty, the Decision modified a part of the provided by the Regulation definitions (for instance the terms Member States, European Union were replaced by Contracting Party(-ies), Energy Community) and last but not least the decision it set the obligation of the Energy Community Regulatory Board to perform its duties under the Regulation in cooperation with the Agency for the Cooperation of Energy Regulators, while taking into account relevant documents and acts developed by the Agency.

EnC: Decision on Implementation of Regulation (EU) 2017/459

by Alexandra Papaioannou (Athens)

On 28 November 2018, the Permanent High Level Group of the Energy Community (EnC) adopted Decision 2018/06 PHLG-EnC on the implementation of Regulation (EU) 2017/459 establishing a network code on capacity allocation mechanisms in gas transmission systems. The adoption of this decision highlights the importance of applying the same principles, legal requirements and methodologies for the establishment and operation of a single EnC gas market. Furthermore, the adoption of the Regulation by all of the EnC's Contracting Parties contributes to the EnC's primary aim of extending the EU "acquis communautaire" on energy, environment, competition and renewables to the Contracting Parties.

Regulation 2017/459/EU constitutes an amendment of the existing Capacity Allocation Mechanisms Network Code (CAM NC). The Regulation maintains the key principles of the existing capacity allocation in gas transmission systems, as established by the previous legal framework, i.e. Regulation 2013/984/EU. The most important changes introduced by Regulation 2017/459 are new provisions establishing EU-wide rules for identifying market demand for the construction of new or the expansion of existing interconnection points, as well as rules for the allocation of additional or new capacity described as incremental capacity, i.e. the incremental capacity process. It establishes the principles based on which market participants can request incremental capacity and apply for its allocation. The amended CAM NC introduces a biennial market demand assessment procedure for incremental capacity harmonised on the EU level, with the aim to standardise the rules of incremental capacity as well as enhance co-operation between TSOs, market participants and national regulatory authorities.

Infrastructure

EU: ENTSO-G Publishes Draft Ten Year Network Development Plan 2018

by Alexandra Papaioannou (Athens)

On 28 December 2018, as required by Regulation (EC) 715/2009, the European Network of Transmission System Operators for Gas (ENTSO-G) published its draft TYNDP 2018, in order to assess the European supply adequacy and the resilience of the gas system over the next 20 years. The TYNDP focuses on existing investment gaps and how such gaps can be mitigated.

The TYNDP 2018 assessment confirms that significant progress has been made in relation to the current gas infrastructure, enabling the EU to move towards the full achievement of the internal energy market. However, the Plan also highlights specific areas that still show investment needs to improve interconnections and connection to new supplies. TYNDP 2018 includes projects addressing the issues identified, most of which are already at an advanced stage of development or are part of the 3rd PCI list, and are to be commissioned in the coming years. The main projects of the plan expected to be commissioned in 2018 include the construction of 3 new compressor stations in Germany (CS Rothenstadt, CS "Werne" and CS "Herbstein"), the second upgrade of the send out and storage capacity of the Revythoussa LNG Terminal in Greece and the new Gascogne Midi pipeline in France, as well as the MONACO 1 pipeline project in Germany. The TYNDP 2018 scenarios, developed jointly by ENTSO-G and ENTSO-E, represent different paths towards achieving the EU 2030 energy and climate targets and a net GHG reduction of 80 to 95% by 2050.

Competition & State Aid

EU: The General Court Annuls Commission's Decision not to Raise Objections to the Aid Scheme for the Capacity Market in the UK (Case T-793/14)

by Viktoria Chatzara (Athens)

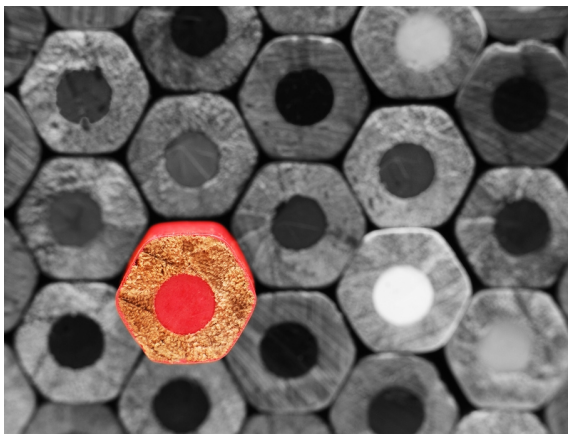
On 15 November 2018, the General Court of the European Union issued its decision in Case No. T-793/14, seeking the application of two sell electricity suppliers and sellers of demand-side response (DSR) technology, against the decision No. C(2014)5083fin. of the European Commission not to raise objections to the aid scheme for the capacity market in the United Kingdom, on the ground that said scheme was compatible with the internal market. According to the aid scheme in question, operating in accordance with the UK Energy Act 2013, the UK established a capacity market, involving centrally-managed auctions, in order to procure the necessary level of capacity to ensure capacity adequacy. The participating electricity capacity providers were remunerated in exchange for their

commitment to provide electricity or reduce or delay their electricity consumption during system stress periods. The amount of required capacity would be decided centrally and the price for its supply would result from auctions, in which all eligible capacity providers compete; in the relevant main auction of each year, the capacity to be delivered four years later would be auctioned, while another auction would take place the year prior to the delivery year. DSR operators and storage operators are also allowed to participate in the enduring auctions.

In its contested decision, the Commission assessed that the above mentioned measure constituted state aid, but was compatible with the internal market, according to the applicable EU law provisions. The applicants before the General Court claimed that the Commission's decision violated the applicable EU state aid law provisions, namely the principles of non-discrimination, proportionality and protection of legitimate expectations, and incorrectly assessed the facts of the case. The Commission's decision not to launch a formal investigation concerning the debated state aid scheme, on the basis that it did not have doubts as to its compatibility with the internal market was particularly examined by the General Court. In this context, the General Court concluded that certain conditions of the scheme in question, such as some of the conditions of participation in the capacity market applicable to DSR operators, should have led the Commission to have doubts as to the scheme's compatibility with the internal market and, more specifically: (a) the capacity of the measure to achieve its objectives in terms of development of DSR and, (b) its compatibility with the requirements of the applicable EU Guidelines, in terms of adequate incentives for DSR operators. Taking the above into account, the General Court annulled the Commission's decision not to raise objections.

EU: Approval of Reductions in RES and CHP Surcharges for Energy-intensive Companies in Greece (SA.52413)

by Viktoria Chatzara (Athens)



On 18 December 2018, the European Commission published its decision on the Greek state aid scheme granting reductions to energy-intensive companies on a surcharge implemented in order to finance support for renewable energy production (RES) and high-efficient cogeneration of electricity and heat (CHP) in Greece. According to the applicable Greek law provisions, in order for the Greek State to provide support to RES and CHP, a surcharge is imposed on final electricity consumers, calculated on the basis of their electricity consumption. The contemplated state aid scheme provided that reductions on the above mentioned surcharge will be granted to energy-intensive companies that are exposed to international trade. Furthermore, Greece submitted to the Commission an adjustment plan, aiming to align the level of reductions for all eligible companies and, following a transitory period, to phase out the reductions for non-eligible companies that were benefitting up to now from a reduction on the surcharge.

According to the Commission's assessment, the Greek measure in question constitutes state aid. In this regard, the Commission also took into account the 2014 Guidelines on State aid for environmental protection and energy, pursuant to which, it is possible for Member States to grant reductions (up to a certain level) to energy-intensive companies exposed to international trade on levies imposed on energy consumers with the aim to fund and support RES. Furthermore, the scheme in question was considered by the Commission as a measure that will promote EU energy and climate goals, assist in the global competitiveness of EU energy-intensive companies, without unduly distorting competition in the single market. Taking the above into consideration, as well as the fact that the contemplated reductions in the Greek state aid measure at hand would be granted only to energy-intensive companies exposed to international trade, the Commission resulted that the Greek measure, as well as the adjustment plan submitted by the competent Greek authorities, are in line with the applicable EU state aid provisions and, as such, compatible with the single market.

EU: Obligations to Increase Electricity Trading Capacity in an Antitrust Case

by Kosmas Karanikolas (Athens)

On 7 December 2018, the European Commission issued a decision that obligated the largest TSO in Germany, i.e. TenneT, to amplify cross-border flows of electricity from the Nordic countries to Germany. The issuance of the aforementioned decision stemmed from TenneT's conduct in the German electricity interconnectors' market that was considered to be rather incompatible with the provisions of EU competition law which prohibit the abuse of dominant position and prevent trust agreements between enterprises (art. 102 TFEU and EU Regulation 1/2003 – Antitrust Regulation). *In concreto*, the investigated TSO, which channels electricity from generation plants to regional electricity DSO and large industrial electricity consumers, was found to systematically confine capacity at the electricity interconnector between Denmark and Germany. This conduct precluded imports of low-cost, renewable sources' originated electricity from the Scandinavian countries to Germany, leading to competition restriction and, further, to manipulated increment of electricity prices. Upon this factual background, the European Commission commenced on March 2018 a formal antitrust investigation into TenneT's practices which led to the tender of specific, quantified commitments by the latter that intend to alleviate the Commission's concerns. More specifically, TenneT undertook to dispose to the market the maximum capacity compatible with the safe operation of the interconnector and confine this capacity only in light of exceptional circumstances, under penalty of imposition of a fine amounting to 10% of the company's worldwide turnover.

EU: Commission Approves State Aid for Natural Gas Interconnector between Greece and Bulgaria (SA.51023 & SA.52049)

by Viktoria Chatzara (Athens)

On 8 November 2018, the European Commission issued its decision on the state aid schemes concerning the public support for the construction and operation of a natural gas interconnector (IGB) between Greece, namely Komotini, and Bulgaria, namely Stara Zagora (cases No. SA.52049 and SA.51023 respectively). The IGB is designed to transport 3 billion cubic meters per year of natural gas from Greece to Bulgaria by 2021, while at a subsequent stage its capacity of transfer is intended to increase to 5 bcm/year and also allow physical reverse flow capacity from Bulgaria to Greece. The interconnector will be owned by a 50-50 joint venture between the IGI consortium (which includes Edison of Ital and DEPA, the Greek gas incumbent), and BEH, the Bulgarian gas incumbent. The total investment cost for the realization of the IGB will be jointly financed by the joint venture stakeholders, the European Energy Program for Recovery (managed by the European Commission), the European Investment Bank (EIB), and the Bulgarian State.

The state aid measures notified by Bulgaria and Greece and examined by the European Commission: a) an unconditional, free of charge, state guarantee granted by Bulgaria to BEH, in order to cover the loan from the EIB, b) a €39 million direct financial contribution by the Bulgarian state, c) a fixed corporate tax regime that will apply to the joint venture for 25 years from the start of its commercial operations and will be governed by an intergovernmental agreement between Bulgaria and Greece. The Commission evaluated said measures, taking also into account the fact that the IGB is expected to contribute to key EU strategic objectives, including the diversification of gas supply sources, and the safeguarding of energy supply, for which it has been also included in the list of European Projects of Common Interest. Further to the above, the proposed aid measures were found to be necessary, proportionate and limited to the minimum necessary, and not unduly distorting the competition in the single market. As such, the Commission concluded that the Bulgarian and Greek support measures for the construction and operation of the IGB are in compliance with the applicable EU state aid law and the single market.

RES & Energy Efficiency

EU: Directive 2018/2001/EU on the Promotion of the Use of Energy from RES

by Vuk Stankovic (Belgrade)

On 13 November 2018, the European Parliament adopted Directive 2018/2001 on the establishment of a common framework for the promotion of energy from renewable sources. By the adoption of the aforementioned Directive, the European Parliament approved three out of eight (in total) legislative proposals in the 2016 package referred to as Clean Energy for All Europeans (Clean EU) Package. The aim of this new regulatory framework is to reduce the greenhouse gas emissions and pollution by 45% until 2030 compared to 1990 on the territory of European Union. Further objectives of the Clean EU Package are: (i) new renewable energy share target of at least 32% until 2030 followed by refreshed RES regulation including new RES support scheme; (ii) new energy efficiency target of 32.5% by 20130 and annual energy saving obligation beyond 2020; (iii) new policies in heating and cooling sector; (iv) simplification of the EU governance and climate preservation regulations that should facilitate implementation of the Paris agreement.

EU: Commission Calls on 7 Member States to Correctly Transpose the Energy Efficiency

by Kosmas Karanikolas (Athens)

On 8 November 2018, the European Commission initiated proceedings against several EU Member States, namely Hungary, Romania, Slovakia, Finland, Austria, Germany and Spain, for failing to fully transpose the Energy Efficiency Directive (Directive 2012/27/EU) into their legislation. The aforementioned Directive introduces measures for the promotion of energy efficiency within EU, in view of the target to save up 20 % of the EU's primary energy consumption by 2020. In that regard, the Directive lays down rules concerning the removal of barriers in the energy market and the surmounting of market failures that impede efficiency in the supply and use of energy, and establishes relevant indicative national energy efficiency targets.

ALBANIA

Market

Albania: Amendments to the Guidelines Related to Data Exchange

by Manuela Cela (Tirana)

On 2 November 2018, the Albanian Energy Regulatory Authority (ERE) issued its decision no.233 initiating the procedures for approval the amendments to the all TSOs proposal for key organisational requirements, roles and responsibilities in relation to data exchange (KORRR proposal). By decision no.159, dated 9 July 2018, ERE approved the KORRR proposal. Following this approval, OST sh.a with letter no.674 Prot., dated 22 October 2018, submitted for approval the amendments to the proposal of all TSO KORRR. After being reviewed by ENTSO-E in the capacity of the compiler of KORRR on 9 October 2018, the KORRR was approved.

Electricity

Albania: All TSOs Proposals on Generation and Load data provision Methodology

by Manuela Cela (Tirana)

On 2 November 2018, the Albanian Energy Regulatory Authority (ERE) issued its decision No.237 initiating the procedures for approval of the "Proposal of all OSTs on Generation and Load data provision Methodology", in accordance with Article 17 of the Regulation of the European Commission (EU) 2016/1719 of 26 September 2016 ". ERE's decision was based on the OST sh.a letter no. 7329 Prot., dated 23 October 2018, sent to ERE requiring the approval of this proposal, on the basisf of Law no. 43/2015, "On the Electricity Sector", as amended, as well as in the fulfilment of the obligations defined in the Broadcasting Code adopted by ERE. Previously, the OST sha received the communication no. 3886 prot. date 25 May 2018, with object: "Proposals of all TSOs for a common network model methodology in accordance with Article 18 of European Commission (EU) 2016/1719 of 26 September 2016. In accordance with the decision taken by the European Network of Transmission System Operators for Electricity (ENTSO-E) and based on the following instructions, this methodology will be applied to all member states TSOs of the EU which will forward it for approval to their respective regulatory authorities. TSOs from a non-member EU are also encouraged to forward it to their regulatory authorities.

Albania: Regulation on Procurement for Covering of the Grid Losses

by Manuela Cela (Tirana)

OST sha with letter no. 2167/4 Prot., dated 08 October 2018, requested from ERE the amendments of the "Regulation on procurement procedures for purchasing electricity to cover losses in distribution and transmission networks and for energy purchase to ensure the fulfillment of public service obligations. OST sh.a. with letter no. 2167/4 Prot., dated 9 October 2018, continued the correspondence regarding these changes, also referring to the letter of the Albanian Association of Energy Suppliers, dated 26 September 2018, through which it requested the review of decision no.103 of ERE, dated 23 June 2016, which approved the above Regulation; The OST required that, in compliance with the legislation in force for public procurement, the process can be considered valid with only one valid offer. This regulation represents a simplified form of public procurement procedures and also includes procedures for the purchase of electricity to cover the losses by OSHEE sha. Based on these facts, with decision no. 225, dated 26 October 2018 ERE decided to start the procedures for reviewing the OST application for some changes in the "*Regulation of procurement of purchasing electricity for human resources in networks distribution and transmission and for buying and selling electricity to ensure the fulfillment of the obligations for public service.*"

BiH

RES & Energy Efficiency

BiH: Settlement Agreement between BiH and EnC

by Vuk Stankovic (Belgrade)

On 27 November 2018, Bosnia & Herzegovina and Energy Community Secretariat (EnC) signed a dispute settlement agreement concerning mediation in case ECS-1/15. Case ECS-1/15 concerned the failure to carry out an environmental impact assessment in the case of the planned thermal power plant Ugljevik 3 in Bosnia & Herzegovina. Pursuant to the dispute settlement agreement, Bosnia & Herzegovina is obliged to withdraw the environmental permit issued contrary to environmental impact assessment procedure, whereas EnC commits to provide required support in issuing a new permit that shall comply with the Environmental Impact Assessment Directive.

BULGARIA

Electricity

Bulgaria: IBEX and EEX Signed Memorandum on Cooperation

by Veronika Yordanova (Sofia)

On 7 December 2018, the Independent Bulgarian Energy Exchange (IBEX) announced that it has signed a cooperation agreement with the European Energy Exchange (EEX) envisaging introduction of financially settled power futures on the Bulgarian power market. As part of the agreement, EEX will list Euro-denominated and financially settled Base Week, Month, Quarter and Year Futures for the Bulgarian market, following approval of the relevant authorities, IBEX clarified. The new Bulgarian power futures, which are expected to be introduced in the first half of 2019, will be settled against the day-ahead spot market price calculated by IBEX.

"Since the migration PXE Power Futures onto the EEX platform in 2017, we were able to more than triple cleared volumes in Central and South-Eastern Europe. With the introduction of Bulgarian Power Futures, we follow our customers' wish to further extend the offering for this region," Dr. Tobias Paulun, chief strategy officer of EEX, said in the statement. The EEX is also planning to introduce financially settled power futures for the Serbian and Slovenian markets in the first half of 2019.

FYR of MACEDONIA

Oil & Gas

FYR of Macedonia: Approval of DSOs Regulated Income and Tariff

by Simonida Shosholcheva Giannitsakis Zafirovic (Skopje)

On 26 November 2018, the Direction for technological industrial development zones submitted a request for approval of regulated income and tariff for 2019 with appropriate documentation to the competent Regulatory Commission for Energy and Water Services (the Commission). In the request, the Direction purposed the regulated tariff for 2019 to be in amount of 2,8771 den/nm3, i.e. on the same level as provided in the Decision for approval of the regulated income and tariff for performing of the regulated activity, distribution of the natural gas of the Direction for technological industrial development zones UP1 no.08-81/16 from 28.12.2016. The Commission published an announcement in reference to the request on its website and in the two daily newspapers. No opinions and proposals were submitted in reference to the request.

According to the analysis made, on 28.12.2018 the Commission issued the decision: On the Direction for technological industrial development zones Skopje is approved regulated income in amount of 11.664.628 MKD and tariff from 2,7127 den /nm3 for the service, distribution of the natural gas for 2019, for transmitted 4.300.000 nm3 natural gas.

FYR of Macedonia: Approval of DSO GA-MA Skopje Regulated Income and Tariffs

by Simonida Shosholcheva Giannitsakis Zafirovic (Skopje)

On 28 December 2018, the Regulatory Commission for Energy and Water Services of FYR of Macedonia issued a Decision by virtue of which it approved regulated maximum income in amount of 232.647.900 MKD for the transferred 182,000,000 nm3 of natural gas and an average tariff in the amount of 1,2783 den / nm3, for distribution of natural gas for 2019 by the Joint Stock Company GA-MA Skopje. The tariff for consumers, producers of thermal and electricity energy from combined plants in which at the same time and in one process electric and thermal energy and / or mechanical energy is produced, is 1.2268 den / nm3 natural gas. Meanwhile, the tariff for the category of consumers, producers of thermal energy and industrial consumers is 1.3495 den / nm3 of natural gas. The tariff for the category of consumers, other consumers with natural gas consumption in the previous year less than 150.000 nm3 is 1,4108 den / nm3 of natural gas.

FYR of Macedonia: Approval of DSO KUMANOVO GAS's Regulated Tariffs

by Simonida Shosholcheva Giannitsakis Zafirovic (Skopje)

On 28 December 2018, the Regulatory Commission for Energy and Water services of FYR of Macedonia issued a Decision, by virtue of which it approved regulated tariffs for 2019 for the distribution of natural gas to consumers connected with the natural gas distribution system in amount of 3,00 MKD/nm3, from the regulated period 2017-2021. This decision applies to the Public Enterprise for Building Infrastructure Facilities "KUMANOVO GAS" – Kumanovo. The abovementioned decision was issued as a result of the

request and appropriate documentation submitted by Kumanovo, which proposed regulated tariff for 2019 to remain unchanged, i.e. to be kept on the same level as was approved by Decision UP1 no.08-85/16 from 28.12.2016. The Commission made an analysis of the data and found that they are within the already approved tariff. According to the above mentioned, the Commission issued its Decision, which will be enforced as of 01.01.2019.

FYR of Macedonia: Approval of DSO STRUMICA GAS Regulated Tariffs

by Simonida Shosholcheva Giannitsakis Zafirovic (Skopje)

On 28 December 2018, the Regulatory Commission for energy and water services of FYROM issued a Decision, by virtue of which it approved regulated tariffs (for 2019) for the distribution of natural gas to consumers connected with the natural gas distribution system in amount of 2,87 MKD/nm3, from the regulated period 2017-2021. This decision regards the Public Enterprise for energy activities "STRUMICA GAS" – Strumica. The abovementioned decision was issued as a result of the request and appropriate documentation submitted by Strumica, which proposed regulated tariff for 2019 to remain unchanged, i.e. to be kept on the same level as was approved under Decision UP1 no.08-85/16 from 28.12.2016. The Energy Regulatory Commission made an analysis of the data and found that they are within the already approved tariff. According to the above mentioned, the Energy Regulatory Commission issued its Decision which will be enforced as of 01.01.2019.

RES & Energy Efficiency

EnC: FYR of Macedonia's RES National 2020 Target Reduced

by Paraskevi Res (Athens)

Taking into consideration the Secretariat's Second Report to the Ministerial Council on the Progress in the Promotion of Renewable Energy in the Energy Community" submitted to the Ministerial Council in 14 December 2017 and the proposal from the European Commission, the Ministerial Council of the Energy Community (the Council) on 29 November 2018 issued its decision which amends Decision 2012/04/MG-EnC of 18 October 2012 on the implementation of Directive 2009/28/EC and Article 20 of the Energy Community Treaty. According to article 1 of the Decision 2018/2/MC-EnC, article 4 of Decision 2012/04/MG-EnC on the ad hoc adaptations on the Mandatory national overall targets for the share of energy from renewable sources in gross final consumption of energy is amended. The figures in Annex 1 of Directive 2009/28/EC are amended in respect of the Former Yugoslav Republic of Macedonia. Specifically, the latter's national overall target figure of the share of energy from renewable sources in gross final consumption of energy for 2020 was in 2012 determined to be 28% on the bases of the assessment of the 2009 share which was 21,9%. By this decision the 2009 assessment was corrected to be 17,2%, subsequently the 2020 target was amended to 23%.

GREECE

Oil & Gas

Greece: RAE's Decision 1220/2018 on the Final Certification of DESFA as a Gas TSO

by Paraskevi Res (Athens)

On 19 December 2018, Regulatory Authority for Energy's (RAE)' decision 1220/2018 was published in the Official Government Gazette (B' 5740/2018). By virtue of this decision, the RAE certified the National Natural Gas System Operator (DESFA) as Natural Gas Transmission System Operator (TSO), in accordance with the provisions of Articles 9 and 10 of the Directive 2009/73 as well as Articles 62 and 64 of Law 4001/2011. In order to proceed with this certification, RAE examined whether a conflict of interest could arise in Greece due to the fact that the companies holding the majority of the share capital of DESFA are involved in the generation and/or the supply of electricity and/or gas. More specifically, the consortium consisting of Snam (60%), Enagás (20%) and Fluxys (20%), recently completed the acquisition of a 66% stake in DESFA, from the Hellenic Republic Asset Development Fund (HRADF) and Hellenic Petroleum for a consideration equal to € 535 million. The consortium, which was awarded the tender for DESFA's privatization in April 2018, established a company under the name "SENFLUGA ENERGY INFRASTRUCTURE HOLDINGS" (Senfluga) which now holds the 66% of the share capital of DESFA while the Greek State, holds the 34% of the share capital of DESFA.

Taking into account that all the members of the Senfluga consortium are certified by the European Union and the competent national regulatory authorities (Belgium, Spain and Italy) as Natural Gas TSOs, RAE did not examine ad hoc the fulfilment of the terms of Article 9 (1) of the aforementioned Directive. According to the latter provision there must be a clear ownership separation between transmission system operators and any supply undertakings, because this is the best way of achieving effective unbundling of the transmission network and of solving the inherent conflict of interest. On the basis of the data submitted to RAE by the regulatory

authorities, by Senfluga and its shareholders, RAE confirmed that no conflicts of interest arise in Greece because the shareholders of SENFLUGA have no participations in the supply or generation of electricity and/or gas. Furthermore, the Greek Minister of Finance has no relation with DESFA and the Greek State is represented exclusively by the Minister of Energy. Therefore, as regards to the Greek State being a new shareholder of DESFA, both EU and national law requirements on the ownership separation between TSOs and any supply undertakings are met.

According to the decision at issue, the Operator is required to notifiy RAE (as the competent authority for the monitoring of compliance with obligations undertaken under EU and national law) of any change in its shareholder structure, any amendment to the Articles of Association and change of Board of Directors members. The Operator is also obliged to notify RAE of any event that may lead to the acquisition by its shareholder of rights that directly or indirectly enable the shareholder to exercise control on an undertaking operating on production or supply of electricity or natural gas, either in Greece or in the European Union or in the European Economic Area or in the Energy Community. Members of the Board of Directors must declare that they have no professional position or responsibility, interest or business relationship, directly or indirectly, related to an undertaking engaged in the production and/or supply of electricity and/or gas in the European Union for a period of at least six (6) months prior to their appointment. Finally, the Operator has to submit on an annual basis to RAE a report on the effectiveness of confidentiality and commercially sensitive information and on its continuing compliance with Article 9 of the abovementioned Directive.

Greece: Renewal of the Gas Exploitation License in South Kavala

by Mira Todorovic Symeonides (Athens)

On 24 December 2018, law no. 4585/2018 on urgent measures of the Ministry of Environment and Energy published in the Official Journal A' 216/2018, ratified the Agreement between the Hellenic State and the companies Energean Oil and Gas and Kavala Oil, amending the Agreement on Exploitation of Hydrocarbons in maritime area of Thracian Sea ratified by law 2779/1999. It is the fifth amendment of the agreement, by virtue of which the exploitation license has now been extended until a) 23 November 2020 with possibility to be renewed for another year; or b) the beginning of implementation of the concession to use, develop and exploit as the Underground Storage Facility for natural gas, of the natural gas reservoir of South Kavala, by a concessionaire to be selected in a competitive procedure to be conducted by the Hellenic Republic Asset Development Fund.

Infrastructure

Greece: RAE - Approval of ESFA'S Development Plan

by Ifigeneia Argyri (Athens)

On 2 November 2018, the Regulatory Authority for Energy (RAE) issued decision n. 1086/2018 regarding the approval of National Natural Gas System's (ESFA) ten year development plan. In regards with the projects that are included for the first time in the plan, RAE approved the following user interconnection projects: the connection to the network of measuring station in SALFA Anthousa with ESFA (with an estimated budget of € 450.000) and the connection to the network of measuring station in SALFA Ano Liosion with ESFA (with an estimated budget of € 680.000). The aforementioned projects were approved without integration into the Regulated Asset Basis, as they will be recovered from the connection fees. Regarding the development projects, RAE stated that the New Quay Small Scale LNG terminal in Revythousa will be included into the plan after the submission of DESFA'S integrated planning, since this project may possibly be essential for the development of maritime LNG market. The project of Nea Mesimvria-Eidomeni /Geugeli Pipeline and Measuring station is approved in ESFA's development plan outside the period of three years development after the conduction of a "Market Test" and RAE' s consent. As regard to the modernization projects, RAE approved all the projects such as the creation of an Education Centre and the improvement of the accuracy of the measurement in ESMFA's stations. To that end as regards the projects that have already been approved but not yet carried out, the competent authority decided on the imposition of conditions. To be more specific, RAE approved the most of these projects, such as the Compression Station on Kipous and the Measuring Station in Komotini, as well as the high pressure Pipeline in Komotini-Thesprotia after the fulfillment of the imposed terms. Finally, RAE decided the exclusion from the plan of an amount of pilot track- vehicles from the project of the pilot station, as it cannot be justified pursuant to the new provisions of tariff as laid out in the European Tariff Regulation. RAE is going to approve the aforementioned plan after all the terms are fulfilled.

Greece: Agreement between Trans Adriatic Pipeline AG and DESFA

by Andriani Kantilieraki (Athens)

On 12 December 2018, the Regulatory Authority for Energy (RAE) approved the agreement between Trans Adriatic Pipeline (TAP) AG and the Hellenic Natural Gas Transmission System Operator (DESFA) in regards with the maintenance of the Greek section of the TAP pipeline. According to the agreement, DESFA will be responsible for the maintenance of TAP facilities along the 550km of the Greek section of the pipeline, extending from Evros close to the Greek-Turkish border, to Kastoria, on Greece's border with Albania. The maintenance agreement covers a period of 5 years, following the beginning of TAP's commercial operation in 2020, while the contract also includes terms for pre-operational support. The next steps for TAP include building the 105 km offshore installation of the pipeline and the commissioning process. Upon completion, TAP will transport natural gas from the Shah Deniz II field in Azerbaijan to Europe. The 878 km long pipeline will connect with the Trans Anatolian Pipeline (TANAP) at the Turkish-Greek borders, cross Greece and Albania and the Adriatic Sea, before coming ashore in Southern Italy.

It should be noted that prior to the approval of the agreement, RAE took special note of the fact that TAP's shareholding is comprised of BP (20%), SOCAR (20%), Snam (20%), Fluxys (19%), Enagás (16%) and Axpo (5%), whereas members of the consortium of SENFLUGA are also the shareholders of 66% stake of DESFA. With that in mind and with the view of avoiding distortions in the energy market, RAE required from DESFA to be informed prior to the undertaking of any non-regulated activities relevant to TAP. Consequently, DESFA is obliged to inform RAE of any non-regulated technical, commercial or financial agreements/transactions with TAP, while RAE will have to investigate the nature of the agreements in the light of competition-related provisions and approve them within two months of the aforementioned notification.

Competition & State Aid

Greece: Acquisition of Attiki Gas Approved by the Competition Commission

by Anastasia Bolari (Athens)

On 21 November 2018, the Hellenic Competition Commission approved the Share Sale and Purchase Agreement (SPA) between the Public Gas Corporation of Greece (DEPA) and the Attiki Gas B. V. (Attiki Gas), a full subsidiary of Shell Gas B.V. which was concluded on 13 of July 2018. According to the SPA agreement DEPA purchased from Attiki Gas B.V 49 % of the share capital of Gas Supply Company of Attiki (EPA Attiki) and Gas Distribution Company of Attiki (EDA Attiki). The long awaited decision of the Competition Commission not only approved the share acquisition but did not require further commitments on behalf of DEPA. In fact, the Competition Commission confirmed that although the examined concentration falls into the scope of art. 6 par. 1 of Law n. 3950/2011, no serious doubts are raised as to its compatibility with the competition requirements to the markets it concerns. The Minister of Environment and Energy highlighted that the Government plan is the unbundling of DEPA into two segments: commercial and infrastructure/ network. A draft law for the privatization and the unbundling of DEPA is estimated to be introduced to the Parliament by the end of January.

RES & Energy Efficiency

Greece: December 2018 RES Auctions

by Mira Todorovic Symeonides (Athens)

The second regular wind and PV state aid auction, which was held on 10 December 2018, has resulted in: a) awarding of all capacities for two out of three categories of RES projects, b) significant, up to 26%, reduction of reference prices compared with the initial reference prices, and c) cancellation by the Regulatory Authority for Energy (RAE) of the auction for the large PV projects. On 18 October 2018, RAE launched the second regular competitive procedure for determining the reference prices of state aid for wind and solar energy producers in Greece. The initial tender capacity for the second auction was 423 MW: 94 MW for small PV projects, 100 MW for big PV projects and 229 MW for wind projects. In order to enhance competition, the final auctioned capacity was determined by the minimum competition level, which has been set at 75%. This means that the total capacities of all the participants in the competition should exceed the finally offered capacities for 75% of such offered capacities. The capacities finally offered on December auctions (after the calculation of the minimum competition level) were: for wind 160.94 MW, for small solar PV 61.94 MW and for large PV projects 86.46 MW.

On 14 December 2018, RAE issued Decision 1230/2018 confirming the awarded relevance prices as follows: a) for small PV projects, the initial price was €81.71 per MWh, while the awarded amounts ranged between €63 and €68.99 per MWh, and for wind projects the initial price €79.77 per MWh while the awarded amounts ranged between €55 and €65.37 per MWh. Further it cancelled the auction for large PV plants for the protection of public interest and competition. During the tender procedure two participants with total 15 projects and total capacity of 65,33 MW, although approved during the first phase of the tender, finally failed to participate and submit any bid during the auction for these projects. The consequence was that the determined competition level of 75% was

not applicable during the auction but only to the first phase of the tender procedure. Namely, the final capacity to be offered in the auction was determined to be 86,47 MW (which when increased for 75% reaches the approved capacities for participation of 151,32 MW). However, when the two companies failed to participate in the auctions, the remaining participation of 85,98 MW fell bellow the offered capacities instead of being 75% above the offered capacities. The re-launch of this auction is planed for January 2019.

Greece: Amendments to RES Legislation

by Mira Todorovic Symeonides (Athens)

On 24 December 2018, law no. 4585/2018 on urgent measures of the Ministry of Environment and Energy (the Law) was published in the Official Journal A' 216/2018. The aforementioned law provides for significant amendments to the Greek RES regulation, and in particular:

RES Operator: From 1 April 2019 the former Market Operator LAGIE, which was reorganized by virtue of laws 4512/2018 and 4425/2016 to be the Operator of RES and Guarantees of Origin (DAPEEP), shall undertake the management of the RES Account, including the collection of the RES levy and payments of the state aid to the RES producers. These operations are regulated in more details in the DAPEEP Code issued by the Regulatory Authority for Energy (RAE) Decision 509/2018.

RES levy: Starting from January 2019 the reduction of the RES levy (collected from end-consumers by the suppliers for the RES Account) will be regulated by the Ministry of Environment and Energy in compliance with the European Commission's Guidelines on State aid for environmental protection and energy 2014-2020. The reduced amounts for 2018, as per RAE's decision 1101/2017 will continue to apply during 2019 until the above Ministerial decision is issued. The amounts collected on the RES Account, which exceed the security reserve of €70 million, will be refunded to the suppliers and other load representatives.

Other taxes and levies: The special tax imposed to electricity suppliers in the Interconnected System and the special tax on lignite production imposed on the producers of electricity from lignite (€2 per MWh), both payable on the RES Account are abolished as of 1 January, 2019.

The income from the auctions of greenhouse gas emission allowances may in 2019 and 2020 also be used for financing of projects of fair transmission to low carbon economy, at the same time supporting particularly vulnerable local communities in the Region of Kozani and Florina, and of the Municipality of Megalopolis.

Special RES tax: The exemption of the large PV producers (capacity above 20 MW) and hybrid power plants from payment of this tax imposed on RES producers have now been abolished. Thus, all RES producers are obliged to pay 3% of the price received for the sold electricity to the special account. The collected funds are further shared to the local community and end-consumers in the area where these RES plants are situated and to special fund for environmental protection. The only remaining exemption from payment of this tax are RES installed on roofs, PV systems below 20 MW and autoproducers.

Annual tax for maintenance of RES production license: This tax was introduced into the Greek legal system in 2013 by law no. 4152/2013. Its purpose is to drive the holders of RES production license to finalise the procedures and start operation of the respective plants. The tax is paid to the RES Account within the Q1 each calendar year at a price of €1 / kW. The obligation starts after passing of 3 years following the year of the license issuing and lasts until the licensee submits to the grid operator the guarantee for maintenance of the final offer for connection to the grid. In regards to licenses which have been granted before 2013, the obligation starts after 6 years (3 years for PV) following the year of granting of such license, and in any case not earlier than 1 January 2014. If the tax is not paid when due, the validity of the production license is automatically terminated. The deadline for payment of this tax for 2016 was by Law postponed to 31 December 2018. The Ministry of Environment and Energy will until 30 June 2019 prepare a new unique catalogue of taxpayers for the years 2017, 2018 and 2019.

RES state aid auction procedures: The Law provides certain clarifications regarding the duration of the binding offer for the connection to the grid and/or the installation license of the winning bidders at the auctions for the state aid for RES producers.

Greece: Decision on the Installation of Wind Parks in Reforested Areas

by Kosmas Karanikolas (Athens)

On December 2018, the Council of the State (i.e. the leading administrative court of Greece) dismissed an application for annulment of an Attica's Secretary General Decision whereby the environmental terms concerning the installation and operation of a wind park in a reforested area were approved. More specifically, residents of the area where the wind park is about to be installed appealed against the aforementioned decision, claiming that the latter is unlawful given that the area in question is subject to inescapable reforestation. However, the court rejected the application as, pursuant to the provisions of l. 988/1979, the exploitation of a compulsory reforested area for the purpose of energy production from renewable sources is permitted. Hence, the terms and conditions of such intervention in the reforested area are established through the *approval of intervention* act (art. 58§2, l. 988/1979), which may follow the *approval of environmental conditions* decision but must, in any case, precede the installation of the park in the reforested area.

Greece: Ministerial Decision 85251/242 Regarding Buildings with Nearly-zero Energy Consumption

by Nikoleta Nikolaou (Athens)

On 27 November 2018, Ministerial Decision no. 85251/242 concerning the approval of the national plan for increasing the number of nearly-zero energy consumption buildings (NZEBs), was published in the Official Government Gazette (B' 5447/2018). The aforementioned Decision of the Minister for Environment and Energy, which was issued in accordance with Law 4122/2013, approves the national plan indicated above, with the view of providing the exact definition of NZEBs as well as describing all measures which should be adopted in order to ensure the increase of NZEBs.

According to the approved plan, any building may be considered as a "Building with nearly-zero energy consumption" if: classified at least at energy class A (for new buildings) and classified at energy class B+ (for the existing buildings). Furthermore, the Decision sets out the necessary measures and actions for the increase of the buildings indicated above, which are listed as follows: Compulsory cover in needs of warm water for use; Increase of floor space index of high energy efficient buildings; Expenditure's compensation for building's energy upgrade with the amount of imposed fines; Appointment of a party called "Energy Responsible" for all the public buildings; Increase of damping factors concerning firms' financial assets; and Government entities' obligation for public building's energy management. Finally, the Decision also states certain financial programs to be developed and more specifically programs of Buildings' Energy Upgrade to Buildings with almost zero energy consumption.

Environment

Greece: Transposition of Directive 2016/2284/EU to Greek National Law

by Anastasia Bolari (Athens)

On 23 of October 2018, the joint Ministerial decision no. 67467/3577 was published in the Official Government Gazette B' 4740/2018. The decision incorporates into the Greek national law the Directive 2016/2284/EU on the reduction of national emissions of certain atmospheric pollutants, having as main purpose to reach air quality objectives that do not endanger human health or the environment. Specifically, the Ministerial Decision lays out the national commitments for the reduction of emissions of sulphur dioxide (SO2), nitrogen oxides (NOx), non-methane volatile organic compounds (NMVOC), ammonia (NH3) and fine particulate matter (PM2,5). It further stipulates the framework for the structure, approval and implementation of the national air pollution control programme. This programme aims to monitor and report the emissions of the abovementioned pollutants and the impacts they have on the environment and on human health. The competent authority for the implementation of these provisions is the Directorate of Climate Change and Quality of Atmosphere of the General Secretariat of Environment of the Ministry of Environment and Energy. According to the decision, the competent authority has to submit data to Commission and to European Environment Agency on the implementation of the emissions reduction commitments, as well as provide the public with these information and finally, cooperate with third countries and international organisations concerning technical and scientific research and development, with the aim of improving the basis for the facilitation of emission reductions.

ROMANIA

Oil & Gas

Romania: New Offshore Hydrocarbons Exploration, Development and Exploitation Law

by Madalina Carmen Ion (Bucharest)

The law no. 256/2018, sets out some measures necessary for the implementation of petroleum exploration, development, petrol exploration, abandonment and petrol exploration operations carried out by petrol offshore licensees in accordance with the provisions of the petrol agreements concluded between licensees and the National Agency for Mineral Resources, hereinafter referred to as ANRM. In July 2018, the Romanian Parliament approved the offshore hydrocarbons law and sent it to the president for promulgation, but the president asked Parliament to re-evaluate the law. The main amendments concern the lack of stability and long-term predictability. On 24 October 2018, the modified offshore hydrocarbons law was approved by Parliament and sent for promulgation, and on 17 November 2018 came into force.

The tax rates are calculated on the basis of the gas sales prices of petrol offshore licensees based on the table determining the prices which shall be adjusted annually starting from 1 January 2019 with the annual consumer price index. The royalty ranges between 3 -13.5% of the production value. The licensees are obliged to calculate, declare and pay the tax on offshore revenue.

Additional offshore revenue is defined like the difference between the weighted average price of natural gas sold from its own domestic production from offshore perimeters and the purchase price of natural gas from domestic production for household and non-household customers in 2012, i.e. 45.71 lei / MWh, multiplied by the volumes of gas sold off from domestic production in offshore perimeters. Offshore producers are obliged, in accordance with the regulations issued by ANRE, to sell a minimum amount of natural gas which cannot be less than the 50% share of the quantity of natural gas from its own production contracted with delivery in that calendar year, as a seller. Moreover, the quantity of natural gas contracted on the centralized markets is sold under a procedure approved by ANRE so that natural gas purchasers cannot be conditioned by the purchase of a minimum quantity imposed by the seller.

The value of investments in the upstream segment will be deducted from the windfall tax up to 30%, but unfortunately will be "non-deductible" for profit tax purposes. The funds collected from the windfall tax will be will be aimed at investing in the gas distribution and transmission network. A fine amounting to 10% of the turnover during the year when the breach is acknowledged will be applied if they fail to comply.

An important provision sets out licensees of ongoing offshore concessions benefit throughout the lifespan of the concession from the royalty regime set out by the Law, meaning that the royalty percentage settled out by the law no. 256 does not apply to the pending contracts.

SERBIA

RES & Energy Efficiency

Serbia: Draft Law Banning the Construction of Small HPPs in Protected Area Announced

by Aleksandar Mladenovic (Belgrade)

According to the announcement of the Serbian Ministry of Environmental Protection as of 28 November 2018, in the beginning of 2019 we should expect the draft law banning the construction of small hydro power plants (SHPP) in protected areas to be sent to the Government and then Parliament for adoption. This legislative move follows the Energy Community Secretariat warning that public consultation is an essential part of the environmental assessment procedures, which must be implemented by all Contracting Parties and series of protests where citizens and experts have been demanding from the authorities to stop the construction of SHPPs in protected areas.

In the recent case dealing with this growing problem the Supreme Court of Cessation has upheld an appeal lodged by the Ministry of Environmental Protection, annulling a verdict on the matter by the Administrative Court and confirming the ministry's decision blocking the construction of the SHPP on the Visočica river on Mt. Stara Planina in the south east of the country as it has been found that there are major differences between the environmental impact study produced by the investor proposing to build the SHPP and the situation on the ground found by the Institute for Nature Conservation of Serbia.

However since the construction of SHPPs in Serbia gathered steam after 2009, when the state adopted a decision to subsidize RES production, including electricity generation from SHPPs, it has been found that in practice not all investors are complying with all the requisite terms leading to the extreme non-ecological trend of even diverting streams into pipelines and their potential loss. The new legislation as announced could strip the already built SHPPs of the right to state subsidies if it is determined they fail to comply with environmental protection procedures.

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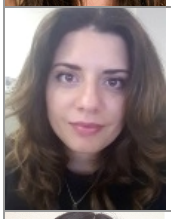

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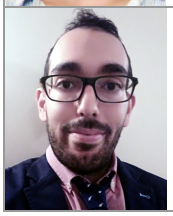

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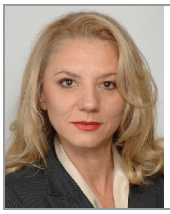

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