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## [EU: Problem of High Energy Prices Addressed in Different Papers both by the European Commission and the Council](#)

*by Georgia-Ilianna Karamani (Athens)*

On 30 June 2014 the European Commission's DG SANCO (Directorates-General Health and Consumers) issued the 10th Consumer Markets Scoreboard, a tool monitoring single market's performance for EU consumers and warning of potential problems. According to the Scoreboard's conclusions, despite the improvements already made since 2012, the utilities market still performs insufficiently as far as comparability of offers, choice of providers and facilitating of switching is concerned. Moreover, the Commission suggests that performance deterioration of electricity services causes consumer dissatisfaction, since the consumers are not able to benefit from the energy market liberalisation, having the prices rising, yet at the same time electricity suppliers still gaining strong profits. The 10th Consumer Markets Scoreboard shall be followed by a new 2014 electricity market study, whose findings are to be compared with the ones of the relevant study of 2010, estimating the success of the existing improvements.

On 13 June 2014 the Council published its conclusions on "Energy prices and costs, protection of vulnerable consumers and competitiveness", stressing out the urgent need to complete the Internal Energy Market (IEM) by 2014 and develop interconnections so as to put an end to any isolation of Member States from European gas and electricity networks by 2015. Moreover, the Council underlined the importance of promoting domestic resources and competition on gas supply markets, and recognised the continued rise of consumer prices, much due to increased network costs and taxes/levies. The necessity for the timely adoption and implementation of network codes for gas and electricity and the raise of awareness of consumers were also mentioned, along with the need for the improvement of energy efficiency based on cost-effective energy saving measures, further diversification of energy supply and supply routes and development of energy infrastructure. The Council recognised the need to combat energy poverty, through identifying and protecting vulnerable consumers, using appropriate measures and preventing disproportionate disconnection of energy supply.

## [Bulgaria: Commission for Protection of Competition Initiates Proceedings against the three Main Electricity Distribution Companies](#)

*by Svetla Stoykova (Sofia)*

The Bulgarian Commission for Protection of Competition initiated on 8 May 2014 proceedings against CEZ Distribution Bulgaria JSC, EVN Bulgaria Electricity Distribution JSC and Energo-Pro Grid JSC for abuse of their dominant position, which may prevent, restrict and distort competition. The infringement is relating to charging the companies providing television, internet and telephony services with unreasonably high prices for providing access

to low voltage grid. According to the relevant statements of the Commission, the costs for maintenance of the electricity grid are at the expenses of the main business activity of electricity distribution companies and charging the additional business activity with same costs leads to unreasonably high prices for providing access to low voltage grid. As there is no other cost-effective alternative for building up the electronic communication network for provision of television, internet and telephony services, the electricity distribution companies are in position to determine the prices for low voltage electricity in their territory acting as enterprises with dominant position. The initiated procedure is still pending and the electricity distribution companies concerned may present written objections and request to be heard by the Commission in an open hearing session.



### [EU: Decision Annulling Commission's Decision on PPC's Lignite Exploration Rights Was Repealed by the Court – New Law for Creation of Small PPC Issued](#)

*by Viktoria Chatzara (Athens)*

On 17 July 2014 the Court of Justice of the European Union issued its decision on the appeal brought by the European Commission against the General Court's decision on case T-169/08, by which the General Court had annulled the Commission's decision C(2008) 824 fin, according to which Hellenic Republic was found to have distorted competition by creating inequality of opportunities between economic operators on the wholesale electricity market and thereby reinforcing the dominant position of the Greek Public Power Corporation (PPC) as a result of the quasi-monopolistic lignite exploration rights granted to the latter, infringing as such the combined application of Articles 106 par. 1 and 102 TFEU. The Court accepted the Commission's appeal and set aside the General Court's decision. At the same time it ruled on the second and fourth part of PPC's first plea before the General Court, whereas it referred the case back to the General Court for adjudication on the rest of pleas.

According to the Court, in order for a national law, regulation or administrative provision to be considered as a breach of the prohibitions laid down by Article 106 par. 1 TFEU in conjunction with Article 102 TFEU, it suffices for the Commission to define and prove that an opposite to competition Law consequence, potential or actual, derives from this measure. This ruling came contrary to the General Court's analysis, according to which the Commission, by finding that PPC continued to maintain its dominant position on the wholesale electricity market and that this situation created and inequality of opportunities on that market, had neither identified nor established sufficiently the abuse to which the national measure in question would or could have led PPC. Moreover, the Court rejected other PPC's grounds against the Commission's decision ruling that in order for a public undertaking or an undertaking on which the State has conferred special or exclusive rights to be considered to abuse its dominant position extending it from one market to another, the Commission does not have to prove that the State measure grants or enhances special or exclusive rights; it suffices that the national measure creates a situation in which a public undertaking is led to such an abuse.

A permanent solution to the issue of PPC's quasi-monopolistic use of lignite for power production is intended to be given by the new Law 4273/2014 on creation of a new vertically integrated electricity company (the Small PPC) which was voted by the Greek parliament and issued in the Official Journal (A'146) in 11 July 2014. The Small PPC, which will be a 100% subsidiary of PPC and will thereafter be sold in an international tender, will be created through separation of approximately 30% of assets and activities of PPC into a new entity. It will acquire lignite power plants as well as natural gas and hydropower power plants, which represent 30% of PPC's electricity production capacity and 30% of customers of PPC. The Small PPC shall ex lege become universal legal successor of PPC in its legal rights and obligations regarding the transferred assets, employees, supply agreements, and generally to the transferred active and passive of the company.

### Greece: Commission Approves Planned Financial Aid to Energy-Intensive Industry Suffering Increased Costs Due to Emission Rights

by Lazaros Sidiropoulos (Athens)

On 30 June 2014, the European Commission reached a decision not to raise objections against a state aid measure which was submitted by the Greek Ministry of Environment, Energy & Climate Change on 16 April 2014 regarding planned financial measures in favour of energy-intensive sectors of the Greek industry in order to compensate for increased energy costs resulting from greenhouse gas emissions rights payable by power producers. Following Directive 2009/29/EC by which free allocation of emission rights was abolished in respect of power producers as from 1 January 2013, increased costs emerged for power producers which were subsequently passed on to electricity consumers in the form of increases in electricity tariffs. However, according to Article 10a par. 6 of the same Directive, Member States are entitled to adopt financial measures in favour of sectors determined to be exposed to a significant risk of carbon leakage due to costs relating to greenhouse gas emissions passed on in electricity prices, in order to compensate for those costs provided that such financial measures are in accordance with state aid rules applicable. "Carbon leakage" describes the prospect of an increase in global greenhouse gas emissions when companies shift production outside the Union because they cannot pass on the cost increases induced in the context of the EU greenhouse emissions trading scheme to their customers without significant loss of market share. In this regard, Commission Decision 2010/2/EU of 24 December 2009, as amended, determines a list of specific sectors and subsectors which are deemed to be exposed to a significant risk of carbon leakage, being thus eligible for receiving financial aid by the Member States according to the above. With regard to Greece, a ministerial decision shall be soon issued defining the exact measures of financial aid to certain energy-intensive sectors of the Greek industry for a validity period up to 31 December 2020.

### FYR of Macedonia: New Electricity Supply Code under Way

by Simonida Shosholcheva Giannitsakis (Skopje)

The Energy Regulatory Commission (ERC) recently announced that as of 16 June 2014 there were 9 registered and licensed suppliers of electricity in the country. Following the second stage of liberalisation of the electricity market, the country is now preparing for the last and final stage of full liberalisation as of 1 January 2015. During the spring of 2014 the ERC already undertook some amendments to the Electricity Supply Code and is currently elaborating a complete revision of the existing regulatory framework and drafting of a new Electricity Supply Code.

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The draft Energy Supply Code provides full freedom to the consumers to change their supplier at any time, based on a procedure provided in the Code, while the current version of the Code provides specific preconditions to be fulfilled by the consumer in order to be able to change its supplier. If the consumer does not sign a supply contract with one of the registered suppliers of electricity, it shall automatically be supplied by the Supplier of Last Resort for the next whole year.

### Croatia: Decision on the Tariff Rates for the Services of the Electricity Supplier of Last Resort

by Sanja Tolj Par (Zagreb)

Based on Art 11, par. 1, subpar. 10 of the Regulation of Energy Activities (Official Gazette no. 120/12), the Act on the Regulation of Energy Activities and Art. 29 of the Energy Act (Official Gazette no. 120/12 and 14/14), the Croatian Energy Regulatory Agency (HERA) adopted on 12 June 2014 a Decision on the tariff rates for the supply of electricity by the supplier of last resort. These services shall be provided by HEP - Operator distribucijskog sustava d.o.o., a distribution system operator, from 1 July 2014 until 31 December 2014, so as to supply electricity to those customers who have, without their fault, lost their chosen supplier on the market. The tariff rates for the use of the services of the supplier of last resort in the first two months are determined to be 20% higher than the market price of electricity and, depending on the applicable tariff model and voltage, vary from min. 0.29 HRK/kWh to max. 0.63 HRK/kWh, while the tariff rates after the first two months shall be 50% higher than the market price, ranging from min. 0.37 HRK/kWh to max. 0.79 HRK/kWh. These increased tariff rates were adopted with the purpose to enhance liberalisation of the electricity market and in order to accelerate the selection of a new market supplier of electricity by the customer.



### Poland: Amendment Voted Introducing a Single Hydrocarbons Licence

by Michał Trzoska (Warsaw)

On 11 July 2014, the Polish Parliament passed an amendment to the geological and mining law. The amendment regulates prospecting, exploration and extraction of hydrocarbons, including crude oil, natural gas and shale gas. The most significant novelty, introduced by the amendment, is the elimination of the so far existing three separate, licences for exploration, appraisal and extraction, which are now replaced by a single licence covering all of the above. Such licence will be issued for a period of 10 to 30 years. In parallel, the amendment guarantees the rights already acquired by investors; licences already issued remain valid with the possibility of extension or conversion to the new type of licence. The amendment will be submitted to the President for signature and shall enter into force on 1 January 2015.



## Romania: Urgency Enactment Amending Law 238/2004 on Petroleum

by Corina Badiceanu (Bucharest)

On 30 June 2014, an Urgency Enactment amending Law 238/2004 on petroleum was published in the Official Gazette under the number 50/2014. The Urgency Enactment provides an extension to the legal definition of the “national system of transportation of petroleum” by also including “the sections of the interconnection pipelines existing on Romania’s territory”. According to the Romanian legislation, an “interconnection pipeline” is the transmission pipeline that crosses the border between two EU states for the purpose of connecting the transmission systems of those two states. Despite its title (“law on petroleum”) the relevant legal framework applies not only to oil, but also to other forms of hydrocarbons such as natural gas. The new amendments are expected to prevent interruptions in natural gas supply during crisis periods and to also enhance investments, mainly by reducing the period of time necessary to recover an investment.



## EU: CJEU Approves Attribution of Green Certificates Only to Local Producers

by Viktoria Chatzara (Athens)

By its decision of 1 July 2014 in Case C-573/12 of Ålands Vindkraft AB Vs Energimyndigheten, the Court of Justice of the European Union examined the national scheme of support for energy from renewable sources (RES) Sweden chose to adopt under the scope of Article 34 TFEU and the general principles of EU Law. For this purpose, the Court had to review the national legislation of Sweden which implemented the RES Directive 2009/28/EC. According to the national Swedish Law, electricity suppliers and users are obliged to provide each year an amount of electricity certificates demonstrating the amount of energy originating from RES they supplied or consumed, equal to a specific percentage of the total amount. However, only RES producers whose installations are located in Sweden are approved for the award of such certificates, whereas consumers may buy electricity certificates and electricity from different suppliers. The Court, after taking into consideration the fact that the Directive specifically aims at ensuring the effectiveness of such national support schemes, ruled that point (k) of the second paragraph of Article 2 and Article 3(3) of the RES Directive shall be interpreted as allowing a Member State to establish and maintain such a support scheme for green electricity. Furthermore, since the energy market has not yet undertaken exhaustive harmonisation by EU Law, according to the Court’s case law the provisions of Article 34 TFEU continue to apply. The above described Swedish legislation requiring from certain suppliers and consumers to provide electricity certificates, which are only attributed to local producers, is actually capable of impeding electricity imports from other Member States, constituting as such a measure having equivalent effect to quantitative restrictions on imports. Such national measure can, nevertheless, be justified as having the objective of promoting the use of green electricity and, therefore, the protection of the environment. Moreover, taking into account the nature of electricity in the transmission and distribution channels, the Court accepted that national limitations can be deemed as necessary in order to achieve the legislative goals of the enhancement of RES, which

are set by EU legislation. The Court also ruled that the absence of a prohibition for producers to sell both the electricity and the certificates does not mean that the national Law infringes the principle of proportionality, as it can be seen as an additional incentive for producers to increase their production of green electricity.

## EU: European Commission Approves Czech RES Scheme

*by Mira Todorovic Symeonides (Athens)*

On 11 June 2014, the European Commission issued its Conclusion that the Czech Republic RES State aid scheme, already put into effect, while still being under assessment by the Commission, is nevertheless compatible with the internal market pursuant to Article 107 (3) (c) of the Treaty on the Functioning of the EU. The notified measures consist in support schemes to electricity production from RES in the form of feed-in tariffs and green bonus. The aid under notification is governed by the Czech Electricity and Gas Market Operator which factually grants the payments while the Energy Regulatory Office sets the annual level of the support for individual categories through price decisions. The support is granted to the producers situated on the territory of the Czech Republic and to the installations operating as of 1 January 2013. The Commission particularly took into consideration the limits of the aid, its purpose, taking into account changes in investment, operating costs and progress in technological efficiency of electricity production, the yearly adjustment and the commitment to perform an individual control of overcompensation. Electricity producers with an installed capacity of less than 100 MW and hydro plants can make choice on an annual basis between the feed-in tariff and green certificate, while the larger producers may have only the green bonus regime. In the feed-in tariff system the electricity is sold to mandatory purchasers who pay the established price while the Market Operator pays the difference to the mandatory purchaser. The basis for the calculation of the feed-in tariff is the fifteen-year simple payback period of the investment, although the duration of the support may vary depending on the type of renewables. The feed-in tariffs are subject to yearly indexation by 2% throughout the entire support period. If the beneficiary received investment aid for the same electricity plant, the support scheme aid is reduced pursuant to the amount of allocated investment support. In the green bonus scheme the electricity is sold on the market and the electricity producer enters into a contract of responsibility for imbalance /deviation of electricity production with the purchaser. The green bonus is a supplement to the market price corresponding to the difference between the market price and the feed-in tariff which is paid directly by the Market Operator to the electricity producers. The calculation of the green bonus, particular the one in the annual mode, takes into account the market price of electricity forecast for the given technology. The cost of the support is financed partially through a special levy paid by the customers of transmission and distribution of electricity, based on a fix price component irrespective of the actual amount of electricity consumed, and partially through the State budget. Each beneficiary will be subject to control of overcompensation after 10 years from the start of operation.

## Greece: Supreme Administrative Court Rejects Appeal against the Special Levy Imposed on RES Producers

*by Mira Todorovic Symeonides & Lazaros Sidiropoulos (Athens)*

By its Decision 2406/2014, of 30 June 2014, the Council of State, i.e. the Greek Supreme Administrative Court, rejected an appeal filed by an RES producer contesting the legality of the special levy imposed on RES electricity producers in November 2012 by Law 4093/2012. The appeal was raised against the Greek electricity market operator LAGIE which is competent for performing payments to RES producers and respectively for withholding

from the payments the amounts corresponding to the levy imposed. Among others the Court found that, although LAGIE has the legal form of an S.A., it must be considered that it is exercising public authority in this case, because it is operating the special account for the financing of RES sources, which is a duty assigned to LAGIE by the Greek State for the sake of public interest. Therefore, the appeal by which the applicant RES producer disputes the legality of the LAGIE's notice, which includes the monthly levy individually imposed against it, constitutes an action for which administrative courts are competent rather than a civil action. Moreover, the fact that the feed-in tariff payable to the applicant was agreed by means of an agreement between it and LAGIE does not mean that the relevant income is tax-exempt. Therefore, the legislator is not hindered to impose a tax, even if this in effect leads to a reduction of the feed-in tariff. The legislator in this respect needs only to observe general and objective criteria and not exceed the limits of its discretion in determining the appropriate tax. In the present case it may not be considered that the levy imposed is contrary to the principle of proportionality, particularly considering the public purpose pursued and the fact that the levy only applies for a limited period of time compared to the duration of the power purchase agreements. Finally, the plea that this levy constitutes illegal State aid in favour of producers of electricity from fossil fuels was rejected as unfounded, primarily because, even if it should be accepted that the imposition of the duty conceals such state aid, differentiation is justified in this case by reasons relating to the nature of the system which comprises completely different categories of electricity producers.

### Croatia: Amendment to the Ordinance on Acquiring the Status of a Privileged Electricity Producer

by Sanja Tolj Par (Zagreb)

Based on Article 11, Paragraph 2 of the Electricity Market Act (Official Gazette no. 22/2013) the Ministry of Economy of the Republic of Croatia issued on 27 June 2014 an Ordinance amending the Ordinance on acquiring the status of a privileged electricity producer. The said amendment prolonged the duration of previous decisions by which the project owners, i.e. the legal or natural persons registered in the Registry of projects and facilities for the use of renewable energy sources (RES) and cogeneration, have acquired the status of privileged electricity producer. While the decisions regarding the acquisition of a privileged electricity producer status initially had a duration of two years, according to the new Amendment, the duration of such decisions may be, at the request of the project holder, extended to a total of three years from the date of entry into force of the decision, if the privileged producer in question has a 10 or 20 kV terminal connection to the electricity network, or four years from the date of entry into force of the decision if the connection in question is 30 kV or more. This marks a significant change for the project owners, given that the privileged producers who acquired the said status before October of 2013 may extend the time frame available to them to satisfy the required conditions for signing the Guaranteed Purchase of Electricity Agreement with the Croatian Energy Market Operator. In Croatia, all electricity generated by the privileged producers is purchased by the Croatian Energy Market Operator HROTE at a subsidised price based on a particular tariff system for electricity production from RES and cogeneration which was adopted by the Croatian Government on 31 October 2013 and by which the *acquis communautaire* in the field of energy, in particular Directive 2009/28/EC, was transposed into the Croatian legislation. A list of the privileged electricity producers in the Republic of Croatia is available on the official website of the Ministry of Economy, which maintains the Registry of projects and facilities for the use of RES and cogeneration. Compared to May, in June 2014 a significant increase in all RES and cogeneration plants was recorded.



ENERGY INFRASTRUCTURE & GRIDS**EU: ENTSO-E's Issuance of the European Ten-Year Network Development Plan 2014***by Georgia-Ilianna Karamani (Athens)*

On 10 July 2014, ENTSO-E published the European Ten-Year Network Development Plan 2014 (TYNDP 2014), which is now up for public consultation from 10 July to 20 September 2014. The said plan, based on the information that the transmission system operators (TSOs) from 34 European countries offered, describes the strengthening of the European power grid planned until 2030 and includes 120 projects of European significance, aiming, among others, at achievement of an RES penetration of up to 60% and development of more than 20.000 km of High Voltage Direct Current (HVDC) lines mostly covered by submarine cables and only 4% of the total lines crossing populated areas. It also focuses on the market facilitation and the security of supply. The analysis, using 9 cost-benefit indicators, e.g. environmental and socio-economic factors, reached the conclusion that the aggregated transmission investments are projected to amount approximately only 1% of the end user's electricity bill. Furthermore, the TYNDP also mentions the need for investments up to €150 billion in the refurbishment or construction of approximately 50.000 km of extra high voltage power lines in Europe by 2030, while 15% of the total infrastructure needs shall be met by upgrading existing lines. It refers to about 100 spots on the European grid where bottlenecks exist or may develop in the future if the suggested solutions are not implemented and points out that the market integration of the four main "electric peninsulas" to mainland Europe is of great concern. It is also suggested that interconnection capacity must double on average throughout Europe. Although the TYNDP 2014 confirms the findings of the TYNDP 2012, it also enriches them and points out that 30% of the investments identified in the TYNDP 2012 are not in accordance to the set deadlines, running on average two years behind schedule, much due to the slow permit granting and lengthy procedures. Public acceptance is also an issue as many citizens or environmental groups may object to some of the transmission lines.

**Serbia: Draft Distribution Network Code for Natural Gas Presented for Public Consultation***by Vuk Stankovic (Belgrade)*

In June 2014, the public enterprise Srbijagas, which acts in the capacity of the distribution system operator for natural gas (Gas DSO) in Serbia, presented a draft Distribution Network Code for Natural Gas (draft DNCNG) for public consultation, which was concluded on 23 July 2014. The Draft DNCNG is based on an internal decision of the Gas DSO in compliance with the Law on Public Enterprises and aims at harmonisation with the Energy Law and with the provisions set forth in Directive 2009/73/EC, particularly Articles 8 and 25 thereof. In particular, the draft DNCNG regulates the following: (i) plan for development of the distribution system; (ii) technical conditions for connection to the distribution system; (iii) quality and other characteristics of natural gas; (iii) conditions for sustainable and secure performance of the distribution system; (iv) metering rules and required metering equipment; (v) data transfer with related operators and energy entities; (vi) infrastructure maintenance; (vii) access

to the distribution system; (viii) procedure in case of disturbances in the operation of the distribution system etc. After adoption, the Draft DNCNG will represent the first unified network code in the field of natural gas distribution ever issued in the Republic of Serbia, thus constituting generally a significant step toward unbundling of the gas sector.

### Bulgaria-Greece: Second Bidding Phase Opened for Allocation of Capacity on the IGB Interconnector

by Lazaros Sidiropoulos (Athens)

According to an announcement of 8 July 2014, the energy regulatory authorities of Bulgaria (State Energy and Water Regulatory Commission or SEWRC) and Greece (Regulatory Authority for Energy or RAE by its Decision 358/2014) jointly approved the Bidding Phase Notice submitted by ICGB AD in compliance with the jointly issued Guidelines for the second (binding) phase of the market test for management and allocation of capacity on the IGB Interconnector, i.e. the new transmission line designed to connect the national transmission systems of Greece and Bulgaria. The Bidding Phase Notice sets the rules of procedure for participation in the second phase of the Market Test and is run under the provisions of paragraph 6 of article 36 of Directive 2009/73/EC, in order to assess market interest in contracting capacity on the IGB Interconnector. Eligible participants to present binding offers to reserve capacity in the IGB Pipeline in this second Bidding Phase are all the participants to the first Expression of Interest Phase as well as the Bulgarian and Greek TSOs. The second phase of the Market Test started on 8 July 2014 and will be concluded early autumn 2014 according to the schedule included in the Notice.



### EU: Council Adopts Amendment of Directive 2009/71/Euratom Establishing a Community Framework for the Nuclear Safety of Nuclear Installations

by Marina Aliferopoulou (Athens)

On 8 July 2014, the European Council adopted the EU's amended Nuclear Safety Directive, by which: (a) the role and independence of national regulatory authorities is strengthened, (b) a high-level EU-wide safety objective, emphasizing accident prevention and the avoidance of significant radioactive releases is introduced, (c) a European system of topical peer reviews is set up, (d) the transparency on nuclear safety matters (information and cooperation obligations and involvement of the public) is increased, (e) there regular safety reassessments of nuclear installations to identify further safety improvements, taking into account, inter alia, ageing issues, (f) accident management and on- site emergency preparedness and response arrangements and procedures is enhanced, (g) requirements relating to human factors in nuclear safety (nuclear safety culture) are regulated. The Commission will participate as an observer in the peer reviews and will be following up the implementation of the technical improvements required by the report on the stress tests undertaken after the Fukushima accident. It will monitor the implementation of the legislation and promote the research activities. Member States have 3 years to transpose the Directive into national law.

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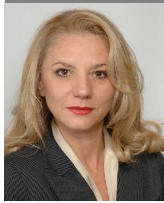
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