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## Greece: Fourth Review of the Second Economic Adjustment Programme – Energy Sector Package of Reforms

by Mira Todorovic Symeonides (Athens)

In April 2014 the European Commission (Directorate-General for Economic and Financial Affairs) issued its Fourth Review of the Second Economic Adjustment Programme for Greece, which, among others, provides a summary of the ongoing reconstruction of the Greek energy sector and specifies in Annex 1 (Assessment of compliance with the Memorandum of Understanding on Specific Policy Conditionality) the time frame for finalisation of individual undertakings. Some of the main actions in the electricity market include: privatisation of the TSO, creation of Small PPC by separation of approximately 30% of the activities of the vertically integrated electricity company and its privatisation, introduction of NOME type auctions of PPCs lignite and hydro power resources starting from 1 September 2014, revision of capacity market in regard to its cost efficiency (through reduction in the quantity of capacity remunerated and possibly of the unit level of remuneration as well), addressing the issue of electricity demand of energy intensive companies (particularly in regard to interruptible contracts and compensation of CO2 incorporated in electricity costs) and revision of PPC's tariff structure by 1 July 2014 to further reduce distortions in the structure of the electricity prices. Fundamental reforms are also planned in the Gas market for the next few months: Broadening the eligibility to all industrial gas consumers starting from 1 October 2015, separation of the supply from the distribution activities of the three regional gas distributors (EPAs) by 1 July 2015, and finalising the regulatory clearance of the sale of 66% of DESFA to SOCAR are some of the immediate steps. The reform of the RES sector consisted in the recent measures of lowering the feed-in tariffs and providing legal ground for revision of the existing power purchase contracts as well as increasing the RES levy every six months in order to address the currently significant liquidity shortage with the aim to eliminate the debt of the RES account by December 2014. In the oil sector a non-profit independent organisation for storage of fuel reserves should be established by August 2014 and become operational by January 2015.

## EU: The New EU Public Procurement Rules and Their Impact on Public Procurement in the Energy Services Sector

by Vasiliki Samartzi (Athens)

On 28 March 2014, three new Directives on Public Procurement Rules were published in the Official Journal of the EU, namely an updated Utilities Directive (Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC), an updated Public Sector Directive (Directive 2014/24/EU on public procurement and repealing Directive 2004/18/EC) and a new Concessions Directive (Directive 2014/23/EU on the award of concession contracts). EU countries should transpose the aforementioned Directives by 17 April 2016. The modernisation of the old procurement rules is taking place with the aim to achieving the "Europe 2020" objectives of the EU including, among others, the

encouragement of the shift to a resource-efficient and low-carbon economy. Apart from the several procedural changes introduced by the Directives making the procurement process more flexible, clarifying the rules on whether variations to awarded contracts require a new tendering process, introducing a new procedure for “innovation partnerships” and a new regime for concessions contracts, the new regime has a special impact on the energy sector in particular. The main changes affecting specifically the energy market are the alteration of the utilities’ scope by introducing different considerations, the definition of the “contracting entity”, the fact that, although it does not matter whether an undertaking is privately or publicly owned, if a publicly owned undertaking is not within the scope of the Utilities Directive then it will ordinarily fall back under the scope of the Public Sector Directive, and the fact that gas, heat and electricity are key definitions for utilities’ purposes. Finally, as far as water is concerned, it was not removed from the new Utilities Directive, notwithstanding its removal from the Concessions Directive.

## EU: Transparency Requirements in Electricity and Gas Households’ Supply Agreements

by Mira Todorovic Symeonides (Athens)

On 8 May 2014, Advocate General N. Wahl of the Court of Justice of the European Union issued an Opinion in joined cases C-359/11 and C-400/11, upon the request for preliminary ruling from the German Federal Court of Justice (Bundesgerichtshof). The guidance for the interpretation was requested in regard to the right of electricity and gas suppliers to adjust the price unilaterally and whether such adjustment hinges the requirements laid down in Articles 3 (5) of the 2003 Electricity and 3 (3) of the 2003 Gas Directives and their respective Annexes A on measures of consumer protection, particularly with respect to the transparency requirement regarding general contractual terms and conditions. The question for the preliminary ruling in both cases was whether the national law for gas and electricity contracts with household customers supplied within the framework of a Universal Service Obligation (USO) satisfies the transparency requirements if the grounds, preconditions and scope of the price adjustments are not specified to consumers and the suppliers’ obligation is restricted to giving them sufficient advance notice of any price increase while the customers have the right to terminate the contract if they do not accept the amendments terms. In both cases brought before the German courts, the consumers challenged the price adjustment on the grounds that the price increase is unreasonable. The Opinion supports that in supply agreements with household customers under USO regime, the transparency requirement should mean that the suppliers are required to disclose to the customer the grounds, preconditions and scope of the price adjustment at the latest by the time that the customer is informed of the adjustment. In that way the customer will be able to assess whether to terminate the contract but also whether or not to challenge a price increase as unreasonable. The transparency requirement may to some extent deter unjustified price increases.

## Energy Community: Issuance of Two Reports Concerning Electricity Regulation in the 8th Region

by Vasiliki Samartzi (Athens)

The objective of the Quarterly Report (“Report on the Development of the 8th Region”) issued on 22 April 2014 by the Energy Community Regulatory Board (ECRB) is to monitor progress during the first quarter of 2014 in the harmonisation and implementation of the different regional legal bases in order to lead to market and regulatory homogeneity in the energy sector in the 8th Region. Regarding the implementation of a single price market

coupling model, lack of concrete progress was identified while the introduction of a cross-border continuous intraday trading system has not even started yet; regarding the improvement and harmonisation of the allocation and nomination rules for long and medium-term transmission rights, it is held that the progress consists in that the SEE Coordinated Auction Office will perform auctions of monthly and daily capacities starting at the end of the 2nd quarter of 2014 and execute auctions for yearly 2015 capacities by the end of 2014; regarding the implementation of fully coordinated capacity calculation methodologies and particularly the flow-based allocation method in highly meshed networks 13, no progress is identified while the time horizon for the development of cross-border balancing project is between mid 2014 and 2015; regarding the market transparency levels, it was argued that none of the CPs TSOs fully complies with the legal transparency obligations; finally, regarding the management and use of interconnections, the applied cross-border allocation capacity mechanisms have been harmonised while regarding joint auctions, market-based mechanisms for cross-border auctions have been introduced in nearly every Contracting Party.

As concerns the ECRB's Report on Market Monitoring Guidelines for the 8th Region, issued on 15 April 2014, the purpose of the guidelines introduced therein is to harmonise the NRAs' monitoring activities, among others, in relation to the transmission grid and in relation to the control of transmission transfer capacity by individual participants in the context of assessing market power. Nevertheless, the purpose of the guidelines is not to subsidise the competent competition authorities in definitively delimiting market power. In particular, by means of the specific guidelines, the ECRB not only defines the data required to implement market monitoring but also introduces six specific predetermined monitoring indicators plus indicator of cross-border transmission capacity auction data, determines the thresholds to establish reasonable range for indicator values, and also defines actions for regulators in cases the indicator is not within the threshold ranges.

### **Energy Community: Dispute Settlement Procedure Initiated by the Secretariat against Ukraine for not Adopting and Enforcing State Aid Legislation**

*by Vasiliki Samartzi (Athens)*

On 22 April 2014, the Energy Community Secretariat initiated a dispute settlement procedure against Ukraine due to the latter's failure to adopt State aid legislation in line with its obligations pursuant to Article 18(c) of the Treaty and the Accession Protocol of Ukraine to the Energy Community, by sending an Opening Letter to Ukraine in accordance with Article 12 of the Rules of Procedure for Dispute Settlement (case n. ECS-8/14). Notwithstanding the initiation of the said procedure and given that the control of aid granted by public authorities is essential for the establishment of a competitive regional energy market, the Secretariat will continue to assist the authorities in Ukraine in drafting and reviewing several pieces of State aid legislation as it did until now. The purpose of the preliminary procedure is giving the Party concerned the possibility to react to the allegation of non-compliance with Energy Community law, within two months, and also enabling the Secretariat to develop and assess the full background of the case. According to the Rules of Procedure for Dispute Settlement interested parties may be granted access to the case file and may submit written observations on the present case to the Secretariat within one month from 22 April 2014. It remains to be seen what the developments regarding the adoption and implementation of laws prohibiting State aid and safeguarding competition in Ukraine will be.



## Greece: Auction Based Market Reform Shall Enhance Competition in the Greek Retail Electricity Market

by Harris Synodinos (Athens)

The Greek Regulatory Authority of Energy (RAE) decided on 7 May 2014 to launch a public consultation regarding the establishment of a regulated futures market enabling suppliers of electricity to have access to lignite and hydro generated electricity, inspired from the French N.O.M.E model (Nouvelle Organisation du Marché de l'Électricité). This market reform is considered necessary due to the lack of sufficient competition, particularly in the retail market, and will be of transitional nature until a sufficient level of healthy and fair competition in the market is reached.

The major novelties proposed by RAE are summarised as follows:

- The historical electricity supplier Public Power Corporation (PPC), which has preferential access to lignite and hydro production, will be obliged to make futures products available covering the domestic market demand for electricity.
- The futures products will be sold through a regulated auction process and will correspond to 25-30% of PPC's annual lignite and hydro generated electricity.
- The right to participate to the auctions will be granted to electricity suppliers, except for PPC, exclusively for purposes of coverage of domestic demand.
- The suppliers' access rights to futures products will be capped according to a calculation performed by the market operator LAGIE with regard to each supplier. LAGIE will define in advance the portion of rights to futures products corresponding to each supplier, varying according to the customer base it serves and the particular consumption profiles of its customers.
- A secondary market will be established; in order to prevent speculative conduct, the resale price in the secondary market is set equal to the purchase price of futures products.

The time-limit for submission of comments in the context of the public consultation was extended from 30 May to 11 June 2014.

## Greece: RAE Rules on a Dispute Regarding the Allocation of Electricity Market Deficits Between Market Participants

by Lazaros Sidiropoulos (Athens)

By its Decision No. 197/2014, which was published on 9 May 2014, the Greek energy regulator RAE ruled on an appeal submitted by the electricity producer Elpedison against: a. the major State owned electricity producer and supplier PPC, b. the Greek electricity market operator LAGIE and c. the Greek electricity transmission system

operator ADMIE. Elpedison had requested among others: that LAGIE is forced to observe RAE's Decisions No. 58/2013 and 285/2013 by which a methodology was established for the proportional allocation of the market deficit created due to the unpaid debts of electricity suppliers which ceased operations; that ADMIE is forced to develop and apply a corresponding methodology for the proportional allocation of payments performed through the mediation of ADMIE (cost recovery for gas generated electricity producers, capacity market remuneration, public service obligations, RES duty etc.); and that PPC complies with its obligation to pay the amounts proportionally allocated to it pursuant to Decisions No. 58/2013 and 285/2013. Meanwhile, PPC has already appealed against RAE's Decision No. 285/2013 before the Greek Supreme Administrative Court (Council of State) which issued on 3 April 2014 an injunction (No. 62/2014) by which it orders PPC to pay only the half of the amount allocated to it by LAGIE based on the allocation methodology provided in Decision No. 285/2013 until the issuance of a final judgment on its appeal. RAE finally decided as follows: Contrary to ELPEDISON's claim LAGIE's conduct was found to be in compliance with the relevant regulatory framework. However, the same does not go for ADMIE which was ordered to comply with the existing regulatory framework and to further develop and propose to RAE a payments' allocation methodology corresponding to the one already applicable in the case of LAGIE. Finally, RAE condemned PPC's refusal to comply with RAE's Decisions No. 58/2013 and 285/2013 and decided to forward the case to the Hellenic Competition Authority so that PPC's conduct will be jointly examined by the two authorities from the viewpoint of compliance with competition legislation.

## BiH: Draft Rulebook on Eligible Customers Presented for Public Consultation

*by Vuk Stankovic (Belgrade) and Nebojsa Milanovic (Banja Luka)*

On 26 March 2014, the Regulatory Commission for Electricity of the Federation of Bosnia and Herzegovina (hereinafter: FERK), presented a draft Rulebook on eligible customers (hereinafter: Draft Rulebook) for public consultation, which was concluded in the last week of April 2014. The Draft Rulebook shall replace the existing Rulebook which currently regulates the transitory period towards the anticipated overall energy market opening in the Federation. The Draft Rulebook shall be applicable from 1 January 2015 in line with the market opening date, whereas some of the provisions in regard to the Supplier of Last Resort are envisaged to enter into force from the date that the Draft Rulebook will be issued, which is expected in the following months.

The aim of the Draft Rulebook is to bring forward a more precise approach in defining the rights and obligations between suppliers, the public supplier and eligible customers, and thus to prepare those participants for the new market regime. For the first time the content of the supply agreement with the public supplier or Supplier of Last Resort is regulated, and mandatory provisions are introduced in regard to price determination for public supply services, information and reporting requirements, deadlines in relation to the change of supplier procedure and calculation of imbalances in the market caused by eligible customers. In addition to above, the Draft Rulebook regulates more precisely the obligations of the Supplier of Last Resort in the event of revocation of license, bankruptcy or liquidation of the initial supplier or after expiration of the supply agreement. Finally, in the Methodology attached to the Rulebook, FERK lays down for the first time the method of determination of the price of electricity supplied by the Supplier of Last Resort.



## **EU: The Commission Imposes Anti-dumping and Countervailing Duties on Imports of Solar Glass Originating in the People's Republic of China**

*by Viktoria Chatzara (Athens)*

On 13 May 2014 the European Commission adopted two Implementing Regulations No 470/2014 and No 471/2014 imposing anti-dumping and countervailing duties respectively on imports of solar glass consisting of soda-lime-flat-glass with an iron content of less than 300 ppm and originating in the People's Republic of China (PRC). These measures are established in the form of ad valorem duties, i.e. in proportion to the value of the import and in accordance with the lesser duty rule. Following complaints lodged in February and March 2013 by producers representing more than 25% of the total Union production of solar glass, the Commission initiated investigations on dumping and on subsidisation of solar glass originating in PRC which caused material injury to the Union industry. Taking into account macroeconomic and microeconomic indicators (such as the normal value of the products, the Union consumption, the volume, price and market share of the dumped imports, labour costs etc.) and after investigating schemes which allegedly involved the granting of subsidies to the solar glass industry in PRC (including, among others, preferential loans, grant programs, government provision of goods and services for less than adequate remuneration, etc.) the Commission concluded that the Union industry had suffered material injury within the investigation period (1 January 2012 -31 December 2012), as its market share shrank and the average sales price fell sharply. Further to that, the Commission ascertained the causal link between the dumped and subsidised imports of the above mentioned product from the PRC, whereas it did not find any other possible cause of the injury it analysed (including imports from other third countries, export performance of the Union industry etc.) to be such as to break this causal link. According to detailed Tables included in the Implementing Regulations, the companies mentioned therein are burdened with anti-dumping duties varying from 0,4% to 36,1% (Article 1 para. 2 of the Implementing Regulation No 470/2014) and with countervailing duties between 3,2% and 17,1% (Article 1 para. 2 of the Implementing Regulation No 471/2014). The aim is that the Union industry shall cover its costs of production and obtain a profit before tax which could be reasonably achieved under normal conditions of competition according with the actual profit which was achieved before the distortion of the competition caused by the Chinese products.

## **Romania: Approval for the Year 2014 of the Quota of Electricity Produced from RES that Benefit from the System of Promotion through Green Certificates**

*by Corina Badiceanu (Bucharest)*

On 28 March 2014, the Government Decree regarding the approval for the year 2014 of the quota of electricity produced from renewable energy sources that benefit from the system of promotion through green certificates was published in the Official Gazette under the number HG 224/2014. The Government Decree establishes that the quota corresponding to the year 2014 is 11,1% of the final gross consumption of electricity. This quota is a

decreased one compared to the quotas established for the years 2013 (14%) and 2012 (12%), but is still higher than the one for the year 2011 (10%). Moreover, according to the latest amendments brought to the Romanian legislation related to the system of promotion of energy produced from renewable energy sources, the next year's quota will be estimated by ANRE. i.e. the Romanian National Authority Regulating the Electricity Sector. Until now, the quota was provided by law, without any preliminary estimation. Thus, as of 2014, ANRE will monitor each year the annual quota of electricity produced from renewable energy sources that benefit from the system of promotion through green certificates and, taking into consideration the achieved percentage in relation to the national target as well as the impact on the final consumers, it will estimate, publish on its website and inform the Government until 30 June on the quota that needs to be established for the next year.

### Ukraine: Bill Amending Feed-in Tariffs for Big Solar Energy Producers

by Alina Karas (Kiev)

By the Bill "On Amendments to the Law on the Energy Industry" submitted to the Ukrainian Parliament on 27 March 2014, the legislator proposes a decrease of feed-in tariffs for big solar energy producers. The novelty of the Bill consists in drawing a distinction between two categories of solar energy producers: the small ones (with an installed capacity up to 10 MW) and the big ones (with an installed capacity over 10 MW). Correspondingly, the legislator proposes different feed-in tariffs for big and small solar energy producers by implementing distinct feed-in coefficients (feed-in tariffs are calculated by applying the feed-in coefficient to the consumer retail tariff as of 1 January 2009). The current coefficient for feed-in tariffs is equal for all solar energy producers and, depending on the period of power production, amounts as follows: from 1 April 2013 to 31 December 2014: 3.5; from 1 January 2015 to 31 December 2019: 3.15; from 1 January 2020 to 31 December 2024: 2.80; and from 1 January 2025 to 31 December 2029: 2.45. The Bill provides now two different types of feed-in coefficients for solar energy producers: while for small producers the aforementioned coefficient remains unchanged, the bill introduces a decreased coefficient for big solar producers, which is practically the aforementioned coefficient cut in half.



### EU: ACER's Opinion on the Appropriate Range of Transmission Charges Imposed on Electricity Producers

by Georgia Ilianna Karamani (Athens)

On 15 April 2014 ACER issued an Opinion on the appropriate range of transmission charges paid by electricity producers. Based on its monitoring activity and the economic assessment of the values of annual average transmission charges faced by producers ("G-charges") at national and transnational level, the Agency concluded that due to the increasing risk of distortion of competition and investment decisions in the internal market, it is important that G-charges are to be applied in a harmonised, cost-effective and efficient way throughout Europe.



More specifically, energy-based G-charges should be equal to 0€/MWh, except for recovering the costs of system losses and the costs related to ancillary services. As for power-based G-charges and lump-sum G-charges no restrictions are considered necessary, as long as they are cost-reflective, bear proper justification and are set in an appropriate and harmonised way. To that end, ACER will continue to monitor the appropriateness of G-charges' levels, raising as important the definition of reasonable reporting requirements in future legislation. An application of the proposed G-charges levels for four years is recommended, starting from 1 January 2015 with a possibility for a transitional period of up to 2 years for Member States in which substantial changes to the current level of charges are required.

### **Greece: RAE's Decisions on the Revenue of the Operators of the Electricity Transmission System & Distribution Network and on the Charges Paid by the Consumers**

*by Lazaros Sidiropoulos (Athens)*

By its Decisions No.195/2014 and 196/2014, which were both published on 30 April 2014, the Greek energy regulator RAE calculated and approved the yearly cost and –subsequently- the required revenue of the operators of the Greek electricity transmission system and distribution network for the year 2014. In this regard, the reasonable rate of return for the transmission system operator ADMIE was raised to 8,5% instead of 8% in 2013. In the said Decisions RAE also respectively determined the charges to be paid by the electricity consumers for the use of the transmission system and the distribution network which will apply from 1 June 2014. While reductions are introduced for larger customers (4,9% reduction of transmission system charges for high voltage customers; 29% reduction of transmission system charges for medium voltage customers; 1,8% to 3,4% reduction of distribution network charges for medium voltage customers) a total raise of 0,5% to 0,8% is introduced for residential low voltage customers. In addition to the above, RAE also launched a public consultation, which was concluded in 23 May 2014, regarding the methodology of calculation of the required revenue of ADMIE for the next years. The main issues addressed to in the proposed methodology refer, among others, to the applicable validity period of the regulated required revenue, the parameters for the calculation of the revenue as well as the criteria for its revision combined with certain incentive mechanisms. In particular, a switch to a 4-year validity period is proposed while the first validity period shall exceptionally not exceed 3 years, covering the years 2015 to 2017. The possibility of adjustment of the reasonable rate of return of ADMIE right up to an additional 2% is envisaged as an incentive for the implementation of major system development projects by ADMIE in accordance with the Ten-Year Development Plan within a certain timeframe. Through this incentive the total rate of return of ADMIE shall become more lucrative for potential investors interested in acquiring the majority of shares of ADMIE in the context of the ongoing privatisation process.



### Croatia: Energy Certification of Buildings and Issuance of Energy Certificates

by Sanja Tolj Par (Zagreb)

By the Building Act (Official Gazette 153 /13; hereinafter: BA) which entered into force on 1 April 2014, new obligations were laid upon all building owners and constructors in relation to the efficient use of energy and heat preservation. By this new act, Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings was transposed into national law of the Republic of Croatia. Pursuant to the BA, an energy certificate must be obtained by the owners of buildings or parts of buildings (flat owners) in the event of a sale, while energy certificates must be also obtained by the lessors in the event of concluding a lease agreement entering into force after 1 January 2016. The existence or not of an energy certificate does not affect the validity of the signed contracts or the validity of the transfer of ownership, however, due to the lack of respective certification the seller and, after 1 January 2016, the lessor may be subject to misdemeanor liability. Energy audits of buildings must be carried out by persons authorised by the Ministry of Construction and Physical Planning and be performed in the manner prescribed by the Energy Audits and Energy Certification of Buildings Ordinance (Official Gazette no. 48/14), which was adopted pursuant to Article 47 of the BA. As far as public buildings are concerned, the same rules apply for residential buildings. Energy certificates do not have to be obtained for buildings serving religious purposes, those with a total useful floor area of less than 50 m<sup>2</sup>, buildings that are of so called temporary nature, industrial buildings, existing buildings or dwellings that are sold or the ownership right is acquired in foreclosure or bankruptcy proceedings, and buildings that are not heated or are heated up to a temperature of +12 °C. The costs for energy certification of buildings are charged to the owners and are regulated by the Highest Price Charged for Performing Energy Audits and the Issuance of Building Energy Certificates Ordinance (Official Gazette no. 36/10). Currently, newer buildings in Croatia mostly qualify for the C energy class.



### Poland: Amendments to the Nuclear Law

by Agnieszka Binieda and Michał Trzoska (Warsaw)

On 8 May 2014, the President of Poland signed an Act (Dz.U. 2014 poz. 587) amending the Nuclear Law (Dz.U. 2001 nr 3 poz. 18) for the purpose of transposing the European Directive 2011/70/EURATOM into national law. One of the main objectives of the Act is to impose the "polluter pays" principle, which means that the producer is responsible for the management of the radioactive waste. Moreover, the Act provides a ban of the import of such

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waste as well as of their export to countries that do not guarantee the safe management thereof. The amendment indicates that the best means of storing nuclear waste is provided by deep (geological) landfills, which is especially important in view of the upcoming construction of a nuclear power plant in Poland. The amendment, which entered into force on 24 May 2014, also provides for the drawing up of a "National plan for management of radioactive waste and spent nuclear fuel" by resolution of the Council of Ministers.

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