



E N E R G Y M A R K E T S

- Energy Community Policy Guidelines and European Commission Recommendation on Application of the Energy Community Acquis between the Contracting Parties and the European Union
- Ukraine: Energy Market Regulator Obliges the Licensees to Disclose Draft Investment Programs for 2015
- EU: Commission Publishes Report on Subsidies and Costs of EU Energy

E L E C T R I C I T Y

- EU: Reductions of Electricity Prices to Energy-Intensive Companies
- EU: Court Rules on Information Obligation Regarding Unilateral Adjustments of Prices in Supply Agreements
- EU - Greece: Two State Aid Decisions Approve Schemes in favour of Energy Intensive Companies
- South East Europe: SEE CAO Announces Auction Platform Opening
- Ukraine: Electricity Market Update
- Serbia: Energy Agency Confirmed Amendments of the Electricity Market Code

O I L & G A S

- Ukraine: Action Plan Approved on Reduction of Natural Gas Consumption until 2017
- Ukraine: Government Decides on the Gas Sale Monopoly of NJSC "Naftogas of Ukraine" until 28 February 2015
- EU/Greece: European Commission Launches Investigation Proceedings on DESFA's Acquisition
- EU: European Commission Adopts the Implementing Regulation 1112/2014 on Off Shore Oil and Gas
- EU: Two Greek Hydrocarbons Tenders Published in the EU Official Journal
- EU – Ukraine: Binding Protocol Signed by the European Commission, the Ukrainian Government and the Government of the Russian Federation on Gas Supply
- Greece: Public Consultation Launched on Draft Standard Agreement for Reservation of Future Gas Capacity

R E N E W A B L E S

- Romania: Further Amendments to the State Aid Scheme regarding Exemptions from the System of RES Promotion
- EU: Court Rules on the Flemish Green Certificate Scheme
- Poland: Controversies over the Act on Renewable Energy Resources

ENERGY INFRASTRUCTURE & GRIDS

- EU: Several EU Decisions and Documents regarding Energy Infrastructure Projects
- Greece: Energy Regulator Defines the Required Revenue of the Electricity Transmission System Operator for the Period 2015-2017

E N E R G Y E F F I C I E N C Y

- Croatia: Parliament Adopts Energy Efficiency Act

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[Energy Community Policy Guidelines and European Commission Recommendation on Application of the Energy Community Acquis between the Contracting Parties and the European Union](#)

by Marina Aliferopoulou (Athens)

On 23 September 2014, the Ministerial Council of the Energy Community (EnC) adopted the Policy Guidelines on the Application of EnC Acquis between the Contracting Parties (CP) and the European Union (EU) aiming to bridge the gaps between the territories of the EU and CPs. They provide among other that in acts of the EnC incorporating EU legislation any reference to energy flows, imports, commercial and balancing transactions, network capacity, existing or new gas and electricity infrastructure (including interconnections and interconnectors), crossing borders, zones, entry-exit or control areas between CPs and integrating the CP/s with the EU internal energy market, shall be treated in the same way and be subject to the same provisions as between CPs. It stresses the importance of cooperation between the EnC Regulatory Board and the EU Agency for Cooperation of Energy Regulators (ACER).

On 29 October 2014 the European Commission adopted a Recommendation addressed to the EU Member States, ACER and economic operators and to the EnC Regulatory Board, recognizing that the “uniform treatment of cross-border flows, cross-border transactions and cross-border infrastructure (interconnections) between all Parties to the Energy Community Treaty is an important element of the single regulatory space for trade in gas and electricity and is an indispensable element to achieve the goals of the EnC. Moreover, the cooperation between the EnC’s Regulatory Board and ACER with regard to its decisions is necessary in order to facilitate the integration of the CP with the EU internal energy market.” References in the EnC *acquis communautaire* for gas and electricity to cooperation and joint activities between national institutions, authorities and economic operators should be understood as including cooperation and joint activities between national institutions, authorities and economic operators of CP and MS.

[Ukraine: Energy Market Regulator Obliges the Licensees to Disclose Draft Investment Programs for 2015](#)

by Tetyana Vyshnevska (Kiev)

On 13 November 2014, the National Commission for State Energy and Public Utilities Regulation concluded to oblige all its licensees (except thermal energy producers, in particular, CHPPs, NPPs, TPPs, from RES and co-generation facilities) to publish draft investment programs for 2015 for public consultation at their official websites by 17 November 2014. This resolution concerns electricity transmission companies (interstate and local pipelines); electricity suppliers as per regulated tariff; thermal energy producers, transmitters and suppliers (except as mentioned above); heat and power producers; suppliers, distributors and transmitters of natural gas, gas (methane) of coalfields as per regulated tariff; companies storing natural gas and gas (methane) of coalfields; companies performing central water supply and water drain.

The licensees shall provide a contact phone, their email address and the email of the Commission to receive comments and propositions to their draft investment programs within 30 days; draft and publish a table of received comments and propositions (that should further be considered during the preparation of investment programs for 2015) and submit it to the Commission within a week following the expiration of the 30-days period. The same mechanism is envisaged for the publication of any draft amendments to investment programs for 2015.

EU: Commission Publishes Report on Subsidies and Costs of EU Energy

by Gerasimos Kourkoumelis (Athens)

On 10 October 2014, the European Commission published an interim report, which is titled "Subsidies and costs of EU energy", aiming to quantify the state interventions in the energy markets of the EU Member States and to record the amount of subsidies with a focus on 2012. More precisely, according to the interim report, in 2012 the total value of public interventions in energy (excluding transport) in the 28 EU Member States was between 120-140 billion euros. As a result of the policies and measures in place in all Member States to promote the use of RES, renewables were indeed the ones to receive the largest amounts of public support in 2012, particularly solar (€14.7bn) and onshore wind (€10.1bn), followed by biomass (€8.3bn) and hydropower (€5.2bn). Coal received the largest amount among conventional power generation technologies (€10.1bn), followed by nuclear (€7 bn) and natural gas (about € 5.2 bn). The figures specifying support across technologies do not however reflect the free allocation of emission certificates nor tax support for energy consumption. Moreover, the study includes data on the capital and operating costs of different electricity and heat technologies, thus providing context to the quantifications of interventions and external costs. Estimates on external costs across power generation technologies are also presented. i.e. regarding costs that are not reflected in market prices, such as costs of environmental and health impacts and the impact of climate change. In general, this comprehensive set of data on subsidies and costs in the field of energy for all EU Member States and for all technologies shall provide insight into the functioning of the energy markets with a view to advancing the debate on state interventions in this sector.



EU: Reductions of Electricity Prices to Energy-Intensive Companies

by Harris Synodinos (Athens)

The General Court of the European Union issued recently a series of 3 important judgments regarding preferential electricity tariffs, but adopting different approaches. In two of them the Court decided to dismiss cases for procedural reasons, avoiding to give a firm universal condemnation of these anti-competitive national practices. All of these cases concerned energy intensive industries, generally of aluminium production, which are facing serious financial problems of competitiveness throughout Europe. Some other recent decisions include: Commission's decision of 25.11.2014 disapproving partially scheme of support for energy-intensive companies benefiting from a reduced renewable surcharge [SA.33995, IP/14/2122]; Commission's invitation of 3.10.2014 to submit comments in relation to a French support mechanism for renewable energies [through a levy imposed on consumers], in order to

cover the resulting costs, [SA.36511 (2014/C) (ex 2013/NN), 2014/C 348/05; Commission's decision to open in-depth inquiry into French tax reductions for large energy consumers of 27.3.2014 [SA.36511, IP/14/327, JOCE C/348/2014]; Commission's decision of 17.7.2013 against a German scheme relieving producers of non-ferrous metals of part of their electricity costs [SA.30068, IP/13/704, and IP/10/1520]) In some other cases, the Commission is positive: i.e. Commissions' decision of 15.10.2014 [C(2014) 7374 final, SA.38711 (2014/N)] of interruptibility service for the electric system in Greece, Commission' decision to approve Romanian green certificate reduction for energy-intensive users. In this context a compensation for the indirect cost of EU European Trade System (ETS) price support was approved by the Commission (see IP 12/498 and specially issued by the Commission guidelines).

Firstly, in the Romanian preferential electricity tariffs cases (T-129/13 Alpiq and T-517/12 Alro), granted by the state owned electricity generator Hidroelectrica, the fifth Chamber of the General Court dismissed (16.10.2014) -using similar wording- actions to challenge the European Commission decisions to open in-depth state aid investigations to examine these preferential tariffs as inadmissible. According to the reasoning at stake, the above national measures were not any more applicable, either at the time of the Commission's decision or at the time that the actions were brought. On this basis, the Commission's decisions did not, according to these judgments, produce any independent, binding legal effects that were capable of affecting the interests of the applicants (see par.40 and following paragraphs and par. 42 following paragraphs respectively).

Secondly, in the Greek case Alouminion (T 542/11) the fourth Chamber of the General Court annulled (8.10.2014) the European Commission's decision, finding that preferential electricity tariffs granted by the Greek state-owned Public Power Corporation to Alouminion constituted unlawful state aid {2012/339/EE ,13.7.2011, SA.26117 C 2/2010 (ex NN 62/2009) EE L 166, σ. 83}, deciding that the suspension of the termination of the contract (under which a preferential tariff was granted) after a first interim order cannot be assessed as a new distinct advantage of existing aid [par. 56]. This judgment disregards -in our eyes- the consistent case law assessing state aid and interpreting the applicable provisions and facts according to their effects on the market.

Last, but not least, in the well-known (see previous cases T-332/06, C-194/09P) Italian case Alcoa (T 177/10), the eighth Chamber Court dismissed an action challenging the decision 2010/460 of the Commission, 19.11.2009, concerning state aid cases No C 38/A/04 (ex NN 58/04) and C 36/B/06 (ex NN 38/06), from Italy to Alcoa Trasformazioni (JO 2010, L 227, p. 62). And thus, deciding -among other issues- that the Commission had rightly indicated that the price obtained by the applicant was lower than the one he would have received in accordance with the market conditions, due to the intervention of the Italian state, and explained (the Commission) why it should dismiss the calculation of the price of the contract made by the applicant, specifying that the calculation was wrong, as it corresponded to the marginal production costs plants having the base load, that is to say, the most economical. However, the Commission emphasised that such costs could not be obtained on the market during off-peak hours, so that the applicant does not consume electricity only during those hours, but 24 hours 24 [par.51]. The Commission -according to the Court- has provided many economic information relating to both market developments (end of the monopoly) and the characteristics of plants applicants (market analysis of Sardinian electricity, for example) [par.84]. And it is clear pursuant to the settled case-law, that state aid must be assessed in itself, and not against objectives relating, for example, to address the imperfectly competitive nature of a market [par.85].

EU: Court Rules on Information Obligation Regarding Unilateral Adjustments of Prices in Supply Agreements

by Viktoria Chatzara (Athens)

On 23 October 2014, the Fourth Chamber of the Court of Justice of the European Union issued its ruling on the joined cases C- 359/11 and C- 400/11 with respect to certain provisions of German Law adopted in the context of the national law's harmonisation to Directive 2003/54/EC concerning common rules for the internal market in electricity and Directive 2003/55/EC concerning common rules for the internal market in natural gas. The disputes in the main proceedings before the competent German courts concerned customers of electricity and natural gas, who had concluded supply contracts, in cases where the suppliers acted as suppliers of last resort. The said suppliers had proceeded with unilateral adjustments of the prices in accordance with the requirements of the national legislation, which did not ensure that the consumers were given adequate notice of the reasons, the preconditions and the scope of the adjustment, but only ensuring that the customer was informed of any increase on rates and that he was entitled to terminate the contract.

The Court examined the above national legislation taking under consideration the provisions of the above mentioned EU Directives, which provided that Member States were obliged to take appropriate measures to ensure high levels of consumer protection, particularly with respect to transparency of the general contractual terms and conditions and, more specifically, on the applicable prices and tariffs. According to the Court, a general obligation of the suppliers to inform the customers of an adjustment of the prices and of their right to terminate the contract does not comply with the respective provisions of the EU Directives, pursuant to which the suppliers shall provide the customers with detailed information concerning the reasons, the preconditions for the adjustment and its scope. Moreover, the Court stated that the customers, in the event of price adjustments, must be entitled to challenge such adjustments, in addition to their right to terminate the contract. It should be also noted that the Court dismissed the request of the suppliers to limit the temporal effects of the judgment in order for the necessary adjustments of the national legislation to be adopted, deeming that the criteria for the exceptional limitation of the temporal effects of the judgment were not fulfilled.

EU - Greece: Two State Aid Decisions Approve Schemes in favour of Energy Intensive Companies

by Marina Aliferopoulou (Athens)

On 3 October 2014, the European Commission (the Commission) published its decision of 30 July 2014 in the case no SA 38630 (2014/N)-Greece regarding a Greek national scheme for the compensation of indirect EU ETS costs. On 16 April 2014 Greece had notified to the Commission a scheme to compensate undertakings for a share of their indirect emission costs resulting from the EU Emission Trading System (ETS) passed on in electricity prices. The Greek authorities intend to grant State aid to energy intensive industries in order to compensate for increased energy costs resulting from greenhouse gas emission rights payable by power producers. The budget for the aid will emerge by the revenues from the auctioning of Greek emission allowances. The relevant account will be held by LAGIE, the market operator. The measure shall cover the period from 2013 to 2020. As the measure fulfils the conditions of the ETS Guidelines of the ETS Section 3.1, the Commission has accordingly decided not to raise objections to the aid on the grounds that is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty of the Functioning of the European Union.

On 15 October 2014, the Commission issued a decision in the case SA38711 (2014/N)-Greece on interruptibility services for the electricity system in Greece. On 5 May 2014, Greece had notified the above measure to the Commission. The Commission observes that the State has established, through amendments to the Energy law, a special fee imposed on all electricity producing units in Greece in order to finance compensation to interruptibility service providers. The Commission observes that the State has entrusted the TSO with the task to centralise and administer all financial flows related to interruptibility service compensation and fees. The Commission concludes that this measure granted through State resources is selective and has an impact on intra-community trade and is liable to distort competition within the EU. However, the Commission also concludes that the Greek TSO, acting on instructions from the State and in pursuance of public service obligations, procures on the market the interruptibility services that are necessary in order to ensure a high level of security and continuity of supply in the Greek interconnected electricity system, as such services could not be technically replaced by other, cheaper alternatives. The Commission's view is that the special fee has two principle objectives: (i) to raise revenues from individual generating units to cover the costs of interruptibility contracts; and (ii) to do so in a way that targets the costs of the contracts on particular generation technologies, according to their reliability. The Commission considers that the fee constitutes a State resource and also that the differential rates of the fees payable by different generators can be considered to be in the nature and logic of the system, therefore not granting a selective advantage to certain generators and, therefore, not constituting State aid within the meaning of Article 107 (1) TFEU.

South East Europe: SEE CAO Announces Auction Platform Opening

by Vuk Stankovic (Belgrade)

On 10 November 2014, the South East European Coordinated Auction Office (SEE CAO) issued an announcement for the opening of the Cross-Border Transmission Capacity Auction Platform on 27 November 2014. Offered capacities for yearly auction were published on 20 November 2014, whereas allocation gates will be opened 26 hours starting from 27 November 10am. Participants in the first yearly auction, however, will be only TSOs of the Montenegro, BiH and Croatia. The yearly auction will be based on recently adopted SEE CAO Code which provides for reservation period, data publishing date and instructions and terms. Given that aim of the SEE CAO is to optimise cross border capacity allocation between all contracting TSOs, joining of the TSOs of Greece, FYROM, Kosovo, and Turkey is highly needed in the forthcoming auctions.

Ukraine: Electricity Market Update

by Tetyana Vyshnevskaya (Kiev)

On 7 November 2014, the Cabinet of Ministers of Ukraine issued Order No. 1080-p "On Amending Annexes 1-6 to the Order of the Cabinet of Ministers of Ukraine dated 03.04.2013 No. 204-p", extending for a month the deadline for submission of privatisation offers for 3 energy supplying companies (65% shares of "Kharkivoblenergo", 70% - "Khmelnyskoblenenergo" and 70% - "Mykolaivoblenergo") until 31 December 2014. On the same date the Cabinet also issued Order No. 1089-p "On Amending Certain Orders of the Cabinet of Ministers of Ukraine", setting deadlines for submission of privatisation offers for 3 energy companies, in particular: 78,29% of shares of PJSC "Centrenergo"; 99,99% - PJSC "Odesa CHPP" and 99,83% - PJSC "Kherson CHPP" as follows: by tenders - until 31 January 2015 (10% of Centrenergo), 31 May 2014 (5% Odesa CHPP and 5% of Kherson CHPP) and at the stock market - until 31 March 2015 (68,289% of Centrenergo) and 30 July 2015 (94,989% of Odesa CHPP and 94,833% of Kherson CHPP).

On 7 November 2014, the Cabinet of Ministers of Ukraine issued Order No. 1092-p "On Extension of Duration of Temporary Emergency Measures at the Electricity Market". The Order extended the validity of the Governmental Order No. 915-p dated 01.10.2014 until 11 December 2014. The Order 915-p stipulated emergency measures like adjustment of tariffs for power transmission and generation (including "green" tariffs); adjustment of investment programs of licensees; establishment of additional payments (up-lifts and discounts) for electricity producers and requirements for the schedule and volume of electricity generation; temporary limitation of power generation (including by RES producers) and the transmission capacity of interstate power grids of Ukraine.

Serbia: Energy Agency Confirmed Amendments of the Electricity Market Code

by Vuk Stankovic (Belgrade)

On 27 October 2014, the Council of the Energy Agency of the Republic of Serbia approved Amendments to the Code on the Electricity Market (Official Gazette RS no. 120/2012, 120/2014) (hereinafter: the Code) prepared by the Serbian Transmission System Operator. The aim of the new amendments to the Code is to comply with the already adopted Serbian regulations related to the terms of delivery, the transmission operation code and the code on cross border allocation of capacities and interconnections. The Code includes a definition of the control block as well as more detailed regulation on the obligations of the balancing parties including mandatory joint balancing reserves. Pursuant to the Code, in the event of distortion of the transmission system, the operator's activation of the offers has to be in line with the interconnections code and with the agreements with the bordering TSOs. Furthermore, the Code introduces a new manner of financial calculation and determination of the prices. Finally, the Code for the first time prescribes rules for overstepping of the balancing group due to unbalanced daily plan.



Ukraine: Action Plan Approved on Reduction of Natural Gas Consumption until 2017

by Tetyana Vyshnevskya (Kiev)

On 16 October 2014, the Cabinet of Ministers of Ukraine issued Order No. 1014-p "On Approval of the Action Plan of Short and Middle-term Measures for Reduction of Natural Gas Consumption until 2017". The Plan contains a list of actions to be taken and documents to be prepared by the relevant state authorities and entities in the last quarter of 2014 - 2017. Among others, the Plan provides for amendments to: the Energy Strategy of Ukraine until 2030 as regards reduction of natural gas consumption and increase of use of energy produced from RES and alternative types of fuel; the Laws of Ukraine "On Heat Supply" and "On Natural Monopolies". It also envisages the adoption of the National Energy Efficiency Action Plan until 2020; laws on energy efficiency in buildings; simplification of procedures for concession, lease and privatisation of thermal energy objects of communal ownership, as well as land allotment procedures for construction of thermal and electric energy generating facilities that use alternative types of fuel and RES; implementation of the definition of "biomass" into the national legislation in accordance with the Directive 2009/28/EC; elaboration of technical conditions for acceptance of biomethane into the Ukrainian Gas

Transportation System and stimulation of its production and use, proposals for local self-governments on the first-priority financing of investment projects for consumers' shifting to types of fuel and energy other than natural gas, and purchase of energy efficient equipment.

Ukraine: Government Decides on the Gas Sale Monopoly of PJSC "Naftogas of Ukraine" until 28 February 2015

by Tetyana Vyshnevskaya (Kiev)

On 7 November 2014, the Cabinet of Ministers of Ukraine issued Resolution No. 596 "On the Procedure for Purchase of Natural Gas by Industrial, Energy and Heat Generating (in the Amount of Industrial Volumes of Gas) Enterprises", which came into force on 11 November 2014 and was further amended by the Resolution of the Government No. 599 dated 12 November 2014. The Resolution 596 sets forth limitations for trade with natural gas in Ukraine (monopoly of PJSC "Naftogas of Ukraine") and provides the list of 90 companies of the energy sector to which the Resolution shall apply. Particularly, according to the Resolution 596, during the period of 11 November 2014 until 28 February 2015 Naftogas shall act as the exclusive seller of natural gas to the listed companies, the sole entity allowed to provide natural gas to gas transmission and gas supplying companies for transportation, and to provide PJSC "Ukrtransgas" with planned distributions of natural gas. According to the note of the Ministry of Energy and Coal Industry of Ukraine dated 11 November 2014, the reasoning behind the decision was to assure the domestic demand for the natural gas imported by Naftogas, at a price that would cover the costs of such import, and to maintain sufficient level of natural gas in the underground gas storage facilities to pass the heating season.

The Resolution 596 has been criticised by many experts and market participants for its alleged incompliance with both Ukrainian and EU legislation, while the Government gave no grounds for such important and even detrimental decision. On 14 November 2014 the Director of the Energy Community Secretariat, Janez Kopač, addressed a letter to the Prime Minister of Ukraine, Arseniy Yatsenyuk, requesting an explanation for the measures taken. The answer was to be provided until 20 November 2014.

EU/Greece: European Commission Launches Investigation Proceedings on DESFA's Acquisition

by Mira Todorovic Symeonides (Athens)

On 5 November 2014, the Directorate-General for Competition of the European Commission decided to open an in-debt investigation on the compatibility of the acquisition of the Greek Natural Gas Transmission System Operator (DESFA) by the Azerbaijan State oil company (SOCAR), following the notification of concentration by the Greek authorities on 1 October 2014. The European Commission (Commission) shall issue its decision until 23 March 2015. According to the related press release, the Commission has concerns that DESFA, after acquisition, may reduce competition on the upstream wholesale supply market of natural gas in Greece by restricting its competitors' access to the Greek transmission network and also restrict inflows of gas into Greece by favouring SOCAR's supplies over its competitors.

This comes after the Greek Regulatory Energy Authority (RAE) issued in September 2014 its final decision on the certification of DESFA as an Independent Transmission Operator of the Natural Gas Transmission System of Greece, after receiving the relevant Commission's Opinion C (2014) 5483, of 28 July 2014, imposing certain obligations and restrictions to DESFA in order to address some competition and security of supply issues. Also in

September 2014, the Greek Parliament enacted amendments to the Energy Law empowering RAE to temporarily suspend a non EU Member State's, shareholder's voting rights in DESFA if its management a) jeopardizes security of supply in Greece or in an EU Member State or b) prevents DESFA from complying with Greek or EU laws, particularly regarding inspection, reporting of data, and interstate agreements or international obligations of Greece or EU or c) makes compliance of DESFA with Greek or EU laws conditional on the supply of natural gas to EU (Greece included) or the conclusion of such natural gas supply agreements.

EU: European Commission Adopts the Implementing Regulation 1112/2014 on Off Shore Oil and Gas

by Mira Todorovic Symeonides (Athens)

On 13 October 2014, the European Commission adopted the Implementation Regulation no. 1112/2014 determining a common format for sharing of information on major hazard indicators by the operators and owners of offshore oil and gas installations and a common format for the publication of the information on major hazard indicators by Member States, which came into force on 11 November 2014. The Regulation implements the requirements stipulated in the articles 23 and 24 of the Directive 2013/30/EU on safety of offshore oil and gas operations and amending Directive 20014/35/EC as well as in point 2 of Annex IX to Directive - Sharing of information and transparency. The aim is to produce a common reporting format for major hazard indications in order to compare information from competent authorities (easy cross-border comparison of data) and individual operations and owners, enable Member States to provide advance warning and take preventive actions as well as demonstrate the overall effectiveness of measures and controls. According to Annex IX, the information to be shared should include information relating to unintended release of oil, gas or other hazardous substances; loss of well control requiring actuation of well control equipment; failure of a safety and environmental critical element; significant loss of structural integrity or loss of protection against the effects of fire or explosion; vessels on collision course or vessel collision; helicopter accidents on or near offshore installations; any serious injuries of 5 or more persons; any evacuation of personnel and any fatal accident; and any major environmental incident.

EU: Two Greek Hydrocarbons Tenders Published in the EU Official Journal

by Mira Todorovic Symeonides (Athens)

On 5 November 2014, a Notice from the Greek Government announcing an international call for tenders for granting and using authorisation for hydrocarbons exploration and exploitation in onshore Western Greece was published in the Official Journal of the European Union (2014/C 390/05). On 14 April 2014 the Company ENEL Trade Spa, within the procedure of Open Door Invitation, submitted to the Greek Ministry of Environment, Energy and Climate Changes (the Ministry) an expression of interest for exploration and exploitation of hydrocarbons within three onshore blocks in the areas of Arta-Preveza, Aitolokarnania and NW Peloponnese in Western Greece. The Ministry accepted the expression of interest and initiated the tendering procedure as per Article 2.17(b) of the law 2289/1995 on Prospecting, Exploration and Exploitation of Hydrocarbons and Other Provisions inviting other interested parties to participate in the tendering procedure. It also prepared and provided on its Internet site, among other information, the model lease agreement for this tender. Deadline for the submission of offers is 6 February 2015.

Energy, Natural Resources & Environment - November 2014

On 11 November 2014, another Notice from the Greek Government announcing the Second International Licensing Round and inviting all interested parties to authorisation for the exploration and exploitation of hydrocarbons in the offshore parts of Western Greece and south of Crete consisting of total 20 blocks was published in the Official Journal of the European Union (2014/C 400/03). Deadline for the submission of offers is 14 May 2015. After examination of the applications, more than one applicant may be invited to negotiate for a particular block. The First International Licensing Round was initiated in 2012 for the areas of Patraikos Gulf, Ioannina and Western Katakolo and the respective lease agreements were concluded in May 2014.

EU – Ukraine: Binding Protocol Signed by the European Commission, the Ukrainian Government and the Government of the Russian Federation on Gas Supply

by Georgia-Ilianna Karamani (Athens)

On 30 October 2014, the European Commission, the Government of Ukraine and the Government of the Russian Federation signed a Binding Protocol, regarding gas delivery for the upcoming winter period from November 2014 until 31 March 2015. Through this Protocol the parties agreed on a temporary solution, in order to deal with the relevant issues of the coverage of domestic consumption and the security of gas supply in Ukraine. The pending arbitration (SCC Arbitration 2014/078) at the Arbitration Institute of the Stockholm Chamber of Commerce may not prejudice the standing of the said Binding Protocol. Gas volumes will be transferred from JSC "Gazprom" to NAK "Naftogaz of Ukraine" and the price shall be decreased by the amount of export duty decrease according to a specific formula provided by the Russian Federation. The payment shall be satisfied before delivery in the agreed bank account and the total fee is agreed to the amount of 3.1 billion US dollars with the deposit of the first tranche of 1.45 billion US dollars being a prerequisite in order for the gas supplies to start.

Greece: Public Consultation Launched on Draft Standard Agreement for Reservation of Future Gas Capacity

by Lazaros Sidiropoulos (Athens)

On 21 October 2014, the Greek energy regulator RAE published a draft of a standard agreement for reservation of future capacity on the gas transmission network and launched a public consultation in this regard which ended on 21 November 2014. This particular category of standard agreement is envisaged in the Greek energy law (Article 71 para 1 L. 4001/2011) and is thoroughly regulated in the Natural Gas Network Code (Article 95D) as amended in December 2013. Main objective of this agreement signed between the network operator (DESFA) and network users shall be to enable the latter to reserve not yet existing capacity in the gas transmission network which will be made available in the future upon completion of new network development projects. Within 10 days upon signing of such agreement the user is obliged to issue surety in the amount of the estimated costs of the network operator connected with the network development works necessary for the implementation of the agreement. Several other issues are regulated in the draft agreement including reciprocal obligations, liability, termination rights etc. Upon completion of the works as well as of the related licensing procedure this agreement is ended and replaced by a connection agreement between the same parties.



Romania: Further Amendments to the State Aid Scheme regarding Exemptions from the System of RES Promotion

by Corina Badiceanu (Bucharest)

On 7 November 2014, a draft Government Decree amending the Government Decree on the approval of the state aid scheme regarding the exemption of certain categories of end consumers from the application of the Law 220/2008 related to the system of promotion of energy produced from renewable energy sources was presented on the Ministry of Economy's website. The draft was available for public consultations for a period of 10 days i.e. until 18 November 2014. The draft provides several important amendments to the already in force Government Decree no. 495/2014 such as the authorisation of the Ministry of Economy to control whether the beneficiaries continue to fulfill the eligibility criteria and keep their business within the European Economic Space during the application of the state aid scheme, as opposed to the current requirement to keep the business in Romania. The draft Government Decree is expected to assure full compliance with the European "Guidelines on environmental and energy aid for 2014 -2020" as requested by the European Commission's representatives at the moment of the approval by the institution of the state aid scheme.

EU: Court Rules on the Flemish Green Certificate Scheme

by Viktoria Chatzara (Athens)

On 11 September 2014, the Fourth Chamber of the Court of Justice of the European Union issued a decision on the joined cases C- 204/12 to C- 208/12 concerning the green certificate scheme adopted by the Flemish Region of Belgium. Pursuant to the scheme at hand, the competent regional regulatory authority issues tradable certificates in respect of green electricity produced in the Flemish region, whereas electricity suppliers have the obligation to submit annually to the above authority a number of such certificates, equal to a proportion of the total volume of electricity they supplied in the said region. Moreover, these suppliers were not entitled to submit to the competent authority guarantees of origin issued in other Member States of the European Union or the EEA, in order to fulfill their obligation under the above legislation. The Court examined the above national scheme under the provisions of the Treaties prohibiting restrictions on the free movement of goods and containing rules on non- discrimination, as well as under the relevant provisions of Directive 2001/77 on the promotion of electricity produced from renewable energy sources in the internal electricity market.

The Court at first stated that the aim of the above Directive is to achieve a situation where the origin of green electricity may be established through a guarantee of origin, which is not linked with the national support schemes for the production of green energy, even if they are using the means of green certificates. In this respect, a Member State is not obliged by the provisions of the above Directive to recognise the purchase of a guarantee of origin from

other Member States. Moreover, the Court deemed that the above described Flemish scheme, although it can be considered to have an equivalent effect to quantitative restrictions on imports, since it gives an advantage to regional green electricity producers who sell the energy along with the certificates required by the suppliers to comply with their obligations towards the competent authority, it is in principle justifiable, as it is related to the general objective of EU of the protection of environment and of the protection of the health and life of humans, animals and plants. More than being related to an acknowledged European objective, the above national measure is also compliant with the general principle of proportionality, provided that mechanisms are established to ensure the creation of a genuine market for green certificates and that the method of calculation and the amount of the administrative fines imposed on energy suppliers do not exceed what is necessary in order to encourage the production of energy from renewable energy sources. Last but not least, the Court ruled that the national support scheme at issue is compliant with the provisions of the Treaties establishing the principle of non-discrimination, stating that the national court had not explained specifically which elements of the particular case could be deemed as constituting discrimination within the meaning of the respective provisions of the Treaties.

Poland: Controversies over the Act on Renewable Energy Resources

by Izabela Jurek (Warsaw)

On 15 September 2014, a draft Act on Renewable Energy Resources, which was previously approved by the lawyer house of the Parliament in first reading and is still pending in the parliamentary procedure, was presented for public consultation. The aim of the act is to adjust Poland legal measures to legislative standards of other leading EU countries in the renewable energy market. It also aims at increasing the energy security and environmental protection, implementing the rational use of renewable energy sources, forming mechanisms and instruments supporting the production of electricity, heat or cold, or agricultural biogas installations of renewable energy sources and developing optimal and sustainable energy supply to final customers.

The act is aimed to realise the strategy for the development of the state power included in the Polish Energy Policy until 2030, adopted by the Council of Ministers on 10 November 2009. One of the priorities of the strategy is to ensure the achievement of at least 15% share of energy from renewable sources in gross final energy consumption in Poland by 2020, including at least 10% share of renewable energy consumed in transport. Some of the key issues publicly discussed are the particularities regarding introducing the auction system which will replace the tradable green certificates. On the basis of this new concept the Government will have to decide how much renewable energy will be produced in a given period of time. At least once a year, the President of the Energy Regulatory Office shall advertise, organise and conduct auctions in the course of which the entrepreneurs offering energy produced from renewable sources at the lowest price will be selected. The winners will receive support in the form of a guaranteed purchase price of the energy for a period of 15 years. Auctions will be held separately for small installations - up to 1 MW of power = and for installations of more than 1 MW. At this stage it is estimated that the new regulation will come into force at the turn of 2016 and 2017.

ENERGY INFRASTRUCTURE & GRIDS

EU: Several EU Decisions and Documents regarding Energy Infrastructure Projects

by Marina Aliferopoulou (Athens)

On 29 October 2014, the Member States of the European Union voted in favour of allocating = and on 21 November 2014 the European Commission has indeed allocated - €647 million to support priority infrastructure projects. The bulk of the support goes to gas projects in the Baltic region as well as in Central Eastern and South Eastern Europe. Funding will come from an EU programme called the Connecting Europe Facility (CEF). The supported projects should increase Europe's energy security and help end the isolation of Member States from EU-wide range networks. They should also contribute to the completion of a European energy market and the integration of renewables to the electricity grid. Most of the money will directly or indirectly finance gas projects. The CEF provides funding for those projects that have clear benefits beyond national borders and are commercially not viable or not affordable to users in certain Member States.

On 28 October 2014, the European Commission issued the Report "on the Implementation of the European Energy Programme for Recovery (EEPR). Energy infrastructure and innovation, the driving forces behind the EEPR". The EEPR's support for innovation in the offshore wind sector and in carbon capture and storage (CCS) is significant for improving the EU's use of indigenous resources, such as wind or coal. According to the Commission Staff Working document in the Annex of the Report, the rate payments remain low as most projects are completed but the promoters will present the final payment request by the end of this year. The Reports states that the complexity of the technologies involved, especially for the Off-Shore Wind Energy integration in the grid and CCS, the difficulties for the public authorities both at government and regulatory level to offer a proper regulatory framework, the lack of public acceptance, as well as difficulties linked to environmental issues and public procurement have all constituted additional challenges for the projects promoters.

On 16 October 2014, the European Commission adopted the Implementing Regulation No 1113/2014, establishing the form and technical details of the notification referred to in Articles 3 and 5 of Regulation (EU) No 256/2014 concerning the notification to the Commission of investment projects in energy infrastructure within the European Union. In order to gather comparable data and to simplify the reporting by Member States or their delegated entities or bodies, notifications to be made should be standardised by the use of reporting tables. Therefore, provisions concerning the form and other technical details of the notification of data and information should be adopted.

Greece: Energy Regulator Defines the Required Revenue of the Electricity Transmission System Operator for the Period 2015-2017

by Lazaros Sidiropoulos (Athens)

On 3 November 2014, the Greek energy regulator RAE published its Decision No. 572/2014 specifying the required revenue of the Greek electricity transmission system operator ADMIE for the years 2015, 2016 and 2017. Earlier this year, on 30 June 2014, RAE had already published Decision No. 340/2014 regulating the methodology of

calculation of the required revenue of ADMIE for the said period of time. Based on the calculation parameters included in this methodology, the new Decision of RAE calculated the required revenue of ADMIE in relation to a reasonable rate of return which was defined for each particular year, amounting to 8,5% for 2015, 7,5% for 2016 and 7.3% for 2017. Specific reference is also made to the possibility of adjustment of the reasonable rate of return of ADMIE right up to an additional 2,5% as an incentive for the implementation of major system development projects in accordance with the Ten-Year Development Plan as this is already provided in the aforementioned methodology. It is also provided that a revision of the above calculations in case of substantial changes in any of the basic calculation parameters is anytime possible. The publication of this Decision No. 572/2014 paves the way to potential investors interested in acquiring the majority of shares of ADMIE in the context of the ongoing privatisation process, now being able to make their final decisions based on concrete future revenues forecasts.



Croatia: Parliament Adopts Energy Efficiency Act

by Sanja Tolj Par (Zagreb)

On 17 October 2014, the Croatian Parliament adopted the Energy Efficiency Act, published in the Official Journal of the Republic of Croatia no 127/2014. The Act regulates the area of efficient energy use, adoption of local, regional and national plans to improve energy efficiency and their implementation, determines energy efficiency measures and requirements, as well as obligations of the energy regulatory authority, distribution and transmission system operators and energy market operators related to transmission, transport and distribution of energy. The Act also regulates obligations of power distributors, energy and water suppliers, and determines consumer rights in regard to the implementation of energy efficiency measures. The purpose of the Act is to realise sustainable energy development, reduce the negative environmental impacts of the energy sector, improve the security of energy supply and meet the needs of energy consumers and international commitments of the Republic of Croatia regarding reduction of greenhouse gas emissions by promoting energy efficiency in all sectors of energy consumption. The Act determines that the national coordinating body for energy efficiency is the Centre for Monitoring of Business Activities in the Energy Sector and Investments (the Centre). The Act stipulates that the Ministry in charge for the energy sector together with the Ministries in charge for construction, for environmental protection and the Centre will develop a National Action Plan for Energy Efficiency in order to prepare and implement energy efficiency policies. The National Action Plan for Energy Efficiency is a key planning document that is adopted for a three-year period and determines the manner of implementation of the policy to improve energy efficiency. The Act further determines that the Environmental Protection and Energy Efficiency Fund will carry out activities to support rational energy management and energy efficiency.

Energy, Natural Resources & Environment - November 2014

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Energy, Natural Resources & Environment - November 2014

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