

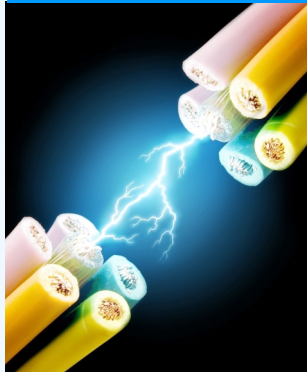
Monthly energy law news from the EU and the SEE countries of the Rokas network

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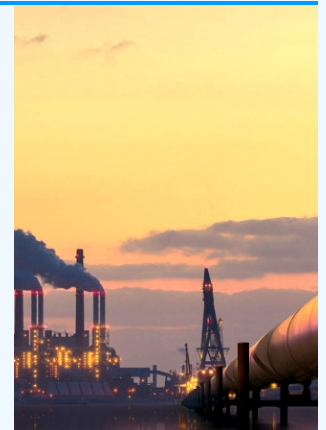
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ENERGY MARKETS

EU: Responses to Consultation on a New Energy Market Design

by Mira Todorovic Symeonides (Athens)

On 8 October 2015, ACER (the Agency for Cooperation of Energy Regulators) and CEER (Council of European Energy Regulators) published a joint response to the European Commission's Public Consultation on a new Energy Market Design (the Consultation), which lasted from 15 July 2015 until 9 October 2015. The first part of the response outlines their vision on the future of electricity sector in Europe and provides suggestions which might require legislative changes, while the second part answers to the specific questions posed by the Commission in the Consultation. In regard to the wholesale electricity markets their proposal includes focusing on the creation of short-term markets, including the development cross-border intraday projects, exposing all RES generators to short-term market price signals and creating bidding zones that promote efficient investment. They propose that the national approach to assessing of generation adequacy, in regard to the national support schemes, is replaced with regional, within the EU and in regard to the neighboring energy markets. They also propose strengthening of the pan-European governance. Thus, in their opinion, ACER should decide on binding subsidiary instruments rather than only in those where NRAs fail to agree while ENTSOs should evolve and undertake to act in the interest of the Union as a whole.

The Consultation sought for the participants' view on issues related to the redesign of the European electricity market such as: improvements to market functioning and investment signals; market integration of renewables and governance of the internal electricity market. In regard to the first issue ACER and CEER's joint response proposes, among others, that prices reflecting scarcity should be a key ingredient of the future market design and intraday auctions should be introduced alongside continuous intraday trading. In regard to the RES integration they are of the view that, in the longer term, an improved EU Emission Trading System and a technology neutral remuneration mechanism for all RES technologies should be the main drivers for RES investments. In regard to NEMO (Nominated Electricity Market Operators) they propose to establish a common body for their cooperation (similar to ENTSO-E), with clear rules on their coordinated decision making and on monitoring by ACER.

On the same date, 8 October 2015, ENTSO-E also issued its response to the Consultation. It particularly refers to the progress achieved with network codes and the target model. It provides suggestions regarding the balancing responsibility for all RES generators, the role of cost-reflective imbalance prices, and the regional review of capacity and support schemes. It has a clear stand that long-term contracts between generators and consumers are not required to provide investment incentives and that subsidies should be limited only to immature RES technologies while the support schemes that do not expose RES to price signals should be removed.

Finally, on 12 October 2015, the Secretariat of the Energy Community also published its responses to the Consultation, addressing the above issues particularly from the side of co-relation between the EU and the Energy Community (EnC). The Secretariat is of the opinion that the key market for providing investment incentives will be the balancing markets. It proposes the introduction of a single scheme for renewable support in the EU's Member States and the EnC's Contracting Parties and the allocation of balance responsibility to renewables. It also stresses the need to overcome the legal cap, currently existing in regard to regulatory decision making on borders between the EnC and the EU, through granting of the decision making rights in ACER to the EnC's Contracting Parties' regulators.



more news on Energy Markets:

Energy Community: Annual Implementation Report

by Eleni Boutla (Athens)

On 8 October 2015, the Energy Community Secretariat published its Annual Implementation Report, which evaluates the progress achieved by the Energy Community Contracting Parties in implementing the Energy Community acquis communautaire in the period from September 2014 to September 2015. The Report provides a detailed analysis of each Contracting Party's progress and achievements per energy sector and topic, and also includes recommendations for further development. Some of the general conclusions are the following: Serbia and Albania have fully and Ukraine has partially transposed the Third Energy Package into the national legal framework; Bosnia and Herzegovina is showing no clear prospects, while the Former Yugoslav Republic of Macedonia has fallen behind and previous achievements have been reversed.

EU: CEER Publishes a Position Paper on Well-Functioning Retail Energy Markets

by Viktoria Chatzara (Athens)

On 16 October 2015, the Council of European Energy Regulators (CEER) published a Position Paper on well-functioning retail energy markets in an effort to develop a holistic set of criteria for assessing what a well-functioning energy retail market should look like. This Paper follows the European Commission's recent Communication on "Delivering a New Deal for Energy Consumers" ("Retail Communication") and seeks to address many of the issues mentioned in it, placing the European Union's consumer interests in the center of their policy. The Position Paper is built around two key principles: on the one hand, that competition and innovation are fundamental (but not sufficient) to well-functioning retail markets and, on the other hand, that consumers must be adequately involved in market activities. These two principles are further analysed in key properties that well-functioning markets are expected to deliver for consumers, whereas a set of 25 metrics is proposed to be considered collectively for each relevant market. The Position Paper is considered to be only one step in the roadmap towards achieving the aims the Regulators have set for themselves. The next steps include work from both the National Regulatory Authorities and CEER, with the object of delivering well-functioning retail energy markets to the benefit of consumers by 2025.

EU: ACER Updates REMIT Related Documents and Starts Receiving Data under REMIT

by Athina Siafarika (Athens)

On 1 October 2015, the third issue of ACER's REMIT Quarterly was published on the REMIT Portal. The issue is focused on data reporting under REMIT, since on 7 October reporting parties started providing records of wholesale energy market transactions executed at organised market places to ACER. Further, new versions of other documents were also published: the Manual of Procedures (MoP), the List of Standard Contracts, the List of Organised Market Places as well as a new edition of the Q&A on REMIT.

EU: Commission Publishes Energy Statistical Pocketbook for 2015

by Athina Siafarika (Athens)

In the beginning of October 2015, the European Commission published the 2015 edition of the "EU energy in figures statistical pocketbook" providing an annual overview of energy related statistics in the EU as a whole and in each of the individual Member States. The 2015 statistical pocketbook covers a whole range of energy statistical data and indicators including, among others, data on production, consumption, greenhouse gas emissions, imports, renewable energy shares, energy efficiency, energy sector employment and EU country profiles. The Pocketbook contains interesting figures for the European energy market and respective comparisons with the rest of the world. For example, in 2013, the EU consumed 12% of the world's total energy, China accounted for 22.4% of energy consumption and the US 16.1%, while on the contrary the EU accounted for only 5.8% of the world's energy production in 2013, compared to China with 19.2% and the US with 13.8%.

EU: European Parliament Publishes Study on the Improvement of Energy Storage

by Dimitris Nisanakis (Athens)

On 15 October 2015, a study was published on the European Parliament think tank web site regarding the improvement of energy storage in the European Union. The study focuses on the current potential of energy storage in the European Union while it tries to find what market designs and regulatory changes can be made in order to reduce the cost and expand the deployment of energy storage technologies which will provide services in order to support the Energy Union strategy. The study comes to the conclusion that, although in the short term the need for additional storage capacity is limited, in the longer term more flexibility will be needed if higher shares of renewable energy are integrated. According to the study, energy storage, next to demand side management, grid interconnections and new flexible power generation units, are the available flexibility options to the system. To this end, the study provides six policy recommendations to fully unleash the potential of energy storage in the EU, consisting in: investing in R&D; removing barriers to gas storage; incentivising competitive storage; providing equal access to flexibility markets; allowing ownership and control of storage; and stimulating storage at the end-user level.

Poland: Amendment to the Act on Energy law Allows for Implementation of REMIT Regulation

by Izabela Jurek (Warsaw)

On 15 October 2015 an amendment to the act on energy law was published introducing measures that will allow the application of the provisions of the Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency (REMIT) in Poland. The act extends the powers of certain regulatory authorities and determines the penalties for breaching the obligations laid down in REMIT. The act came into force on 29 October 2015.

ELECTRICITY

Greece: Supreme Administrative Court Finds that RES Levy (ETMEAR) Is Not a Tax

by Lazaros Sidiropoulos (Athens)

By its Decisions 3366/2015 and 3367/2015, of 18 September 2015, the Council of State, i.e. the Greek Supreme Administrative Court, ruled in plenary session on two cases referred to it by the 2nd Chamber of the same Court (decisions 4555/2013 and 4586/2013) regarding the legal evaluation of ETMEAR, i.e. the special levy imposed to electricity consumers aiming to finance RES production in Greece. The decisions of the 2nd Chamber were issued in two different cases, one following an appeal of some residential electricity consumers and another following an appeal by a large industrial auto-producer of CHP (combined heat and power) generated electricity which is also obliged to pay this levy even for the amount of consumed electricity which is auto-produced. The finding of the 2nd Chamber of the Court in both cases was that this levy should be considered as a tax measure because it is imposed for the sake of public interest (consisting here in the promotion of RES for reasons of environmental protection) and does not correspond to certain services or goods provided to the payers of this levy, i.e. the electricity consumers. This would mean that, according to the Greek Constitution, such levy may only be imposed by means of a law and not by means of an administrative decision, as this was the case here, the latter being therefore void. Nevertheless, the two decisions 4555/2013 and 4586/2013 of the 2nd Chamber were not final, as both cases were referred to the plenary session of the Court due to the importance of the matter.

Now the final ruling of the Court in plenary session in these two cases is contrary to the ruling of the 2nd Chamber. By the aforementioned Decision 3366/2015, issued with regard to the appeal of the residential consumers, the Court found that ETMEAR does not constitute a tax because it is directly related to the electricity delivered to the consumers, which pay for this levy, and reflects part of the electricity costs paid by those consumers. More precisely, although the price paid by the electricity suppliers for the electricity they buy from the compulsory market pool, which is then further imposed to the consumers, does not include the remuneration of the RES electricity producers (consisting in feed-in tariffs), the electricity actually delivered constitutes a mix of conventionally and RES generated electricity; thus, ETMEAR, which is separately charged to the consumers

in their electricity bills additionally to the electricity supply price, should be considered to make up for the difference between the supply price, which only reflects the costs for conventional electricity, and the costs for financing RES generated electricity. However, according to a minority opinion of the Court, which was stated in the reasoning of Decision 3366/2015, ETMEAR does not really correspond to the remuneration of RES producers, as these producers are paid from a special account for the financing of RES sources, which is operated by the market operator LAGIE, and is funded also by several other sources apart from ETMEAR. Nevertheless, based on the opinion of the majority, Decision 3366/2015 found that the administrative decision imposing ETMEAR is lawful and should not be declared void.

Further, by its Decision 3367/2015, which was issued on a similar case with regard to the appeal of the industrial CHP auto-producer, the Court declared the same above mentioned administrative decision which imposed ETMEAR void but only for the part referring to auto-producers of electricity from RES and CHP. The reasoning of this decision was not based on considerations in relation to whether ETMEAR should be considered as tax or not and no connection to the reasoning of Decision 3366/2015 was made. In a very brief explanation, the Court found that consumers of electricity auto-produced through/ or by RES or CHP also contribute to the RES national targets for clean energy and for this reason should not be burdened with the levy imposed to electricity consumers for the financing of this clean energy. As a general remark, some issues of coherence between the reasoning of the two aforementioned decisions could be eventually raised.



more news on Electricity:

EU: Member States Approve Demand Connection Code

by Mira Todorovic Symeonides (Athens)

On 16 October 2015, the representatives of the EU Member States agreed on the Demand Connection Code (DCC) which regulates the connection of demand facilities (facilities which consume electricity) to the grid at all voltage levels. It will become binding after the Council and the European Parliament control if the comitology procedure has been respected. ENTSO-E, who drafted the code, expects that the text will be adopted as binding regulation early 2016. In January 2012 the European Commission gave to ENTSO-E a mandate to develop a network code harmonising connection rules in EU and particular in regard to industrial load and connections to distribution systems. DCC is based on ACER's framework guidelines on electricity grid connections and ERGEG's (European Regulators' Group for Electricity and Gas, an advisory group to the European Commission on internal energy market issues) Initial Impact Assessment. Since 2012, when ENTSO-E prepared the first draft, there has been extensive feedback from stakeholders through two main consultation phases; in 2013 ACER communicated a recommendation to the European Commission to adopt the DCC; also in 2013 ENTSO-E issued guidelines for the implementation of the code, while the text of the Code had undergone several amendments since then. Implementation of DCC should contribute to increasing of RES connections to the grid, implementing of smart grids and enhancing system security and market integration as a result of harmonisation of connection rules in Europe. The adopted harmonised rules all have a cross border impact but should be further tailored by the Member States to suite their system characteristics (network, load, generation portfolio and technology).



Energy Community: Secretariat Publishes Policy Guidelines on the Promotion of Organised Electricity Markets

by Viktorija Chatzara (Athens)

On 13 October 2015, the Secretariat of the Energy Community published its Policy Guidelines on the promotion of Organised Electricity Markets in the Contracting Parties, with the aim of providing guidance on the harmonised development of the necessary institutions, processes and compatible rules needed. The Guidelines follow the provisions of the Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a Guideline on Capacity Allocation and Congestion Management ("CACM Regulation"), which establishes a single mechanism for the cross-border trade of electricity for the day-ahead and intraday timeframes. More specifically, the guidance provided by the present Guidelines is based on the assumption that the provisions of the CACM Regulation are implemented by the Contracting Parties and the focus is put on providing guidance concerning the legal and factual barriers to electricity market liberalisation, which exist and need to be abandoned by the Contracting Parties, and concerning the need for establishment of the underlying markets allowing for coupling. The following steps and measures included in the Guidelines are indicatively noted: creation of a legal and regulatory framework that incentivises the operation of an organised market and abolishes discriminatory barriers to market participation, development of a price deregulation strategy and its implementation, introduction of a market-based balancing regime with fair and comprehensive balance responsibility and settlement processes etc.

Croatia: Act on Amendments to the Electricity Market Act

by Sanja Tolj Par (Zagreb)

On 25 September 2015, the Act on Amendments to the Electricity Market Act (Official Journal, 102/2015) came into effect on the Croatian electricity market. The Amendments ensure harmonisation with the Regulation (EU) 1227/2011 on wholesale energy market integrity and transparency, Regulation (EU) 2015/1222 establishing a guideline on capacity allocation and congestion management, and the Commission Implementing Regulation (EU) 1348/2014. Furthermore, a number of important amendments were introduced relating to the regulation of the electricity market.

Croatia: Regulator Adopts Methodology for Determining Electricity Transmission Tariffs

by Sanja Tolj Par (Zagreb)

The Croatian Energy Regulatory Agency at the session of the Governing Council of 25 September 2015 adopted the Methodology for determining the tariff amounts for electricity transmission (Official Journal, 104/2015), pursuant to Article 11, Paragraph 1, Item 9 of the Regulation of Energy Activities Act (Official Journal, 120/2012) and Article 30, Paragraph 1 of the Energy Act (Official Journal, 120/2012, 14/2014 and 95/2015). The Methodology determines the method and criteria for determining the total costs and revenue of the electricity transmission system operator, the tariff amounts for electricity transmission, as well as the procedures for determination or amendment of the tariff amounts.

Greece: RAE Proposes Amendments to Regulate Self-Supply

by Lazaros Sidiropoulos (Athens)

On 8 October 2015, the Greek energy regulator RAE launched a public consultation on proposed amendments to the Network Metering Manual to include provisions regulating self-supply of electricity. While the adoption of the Distribution Network Management Code is still pending, the Manual remains the principal regulatory instrument for the distribution network activities. According to RAE, a new draft of Distribution Network Management Code is planned to be published for consultation which shall include extensive regulation of self-supply. The proposed amendments to the Manual are thus meant as a minimum harmonisation to the forthcoming code. Most of the amendments simply add the case of self-suppliers of electricity to the already existing provisions applicable to electricity suppliers. The public consultation finished on 19 October 2015.

Romania: ANRE Order Raises the Minimum Number of Eligible Partners for Participants to the Organised Market

by Corina Bădiceanu (Bucharest)

On 14 October 2015, an Order of the Romanian energy regulator ANRE for the amendment of the Regulation on the organised framework of trading on the centralized market with continuous double negotiation of bilateral electricity agreements as approved by ANRE Order no. 49/2013 was published in the Official Gazette under the no. 151/2015,. According to the provisions of the Order no. 151/2015, the list of eligible partners for each participant in the centralised market will contain a number of minimum 8 eligible partners as opposed to the current number required by Order no. 49/2013 of minimum 4 eligible partners. The participants in the centralised market and Societatea Operatorului Pieței de Energie Electrică și Gaze Naturale "OPCOM" (the Romanian gas and electricity market operator) will have to fulfill these new legal requirements as of 1 January 2016 when Order no. 151/2015 will enter into force.

Poland: Amendment to the Act on Excise Tax Introduces Exemptions for Electricity

by Izabela Jurek (Warsaw)

On 28 September 2015, an amendment to the act on excise tax was published. The amendment aims to introduce several tax exemptions for electricity including the one based on the criteria of the use of electricity for certain types of production and its use in energy-intensive plants. It will also organise and simplify the application of records of excise goods. The amendment will come into force on 1 January 2016.

Ukraine: News on Privatisation in the Energy Sector

by Tetyana Vyshnevska (Kiev)

On 7 October 2015, the Cabinet of Ministers of Ukraine issued Resolution no. 819 on Amending Certain Acts of the Cabinet of Ministers of Ukraine Concerning Privatisation. Thereby the Government postponed its plans on allocation of shares of certain state owned enterprises, including 9 companies of the energy sector (5 regional distribution and supply companies and 4 companies operating combined heat and power plants), until the end of 2015 and mid-2016. The Resolution came into force on 21 October 2015. Noteworthy, on 23 September 2015, the Cabinet of Ministers of Ukraine initiated the privatisation of integral property complexes of 2 hydroelectric power plants located in Mykolaiv region, having issued Order no. 1035-p on Privatization of Facilities of the Fuel and Energy Complex. The Order is effective from the date of its issue.



O I L & G A S



EU: Commission Publishes Report on Liability, Compensation and Financial Security for Offshore Oil and Gas Operations

by Stefania Chatzichristofi (Athens)

On 14 September 2015, the European Commission published its report to the European Parliament and the Council (COM[2015] 422 final) regarding the liability, compensation and financial security for offshore accidents in the EU and European Economic Area, concluding that at this moment it is still not necessary to broaden the liability provisions in the EU legislation. This report is published pursuant to Article 39 (2) of the Directive 2013/30/EU of 12 June 2013 on safety of offshore gas and oil operations which requires from the Commission to prepare a report on its assessment of the effectiveness of the liability regimes in EU regarding the damages caused by offshore oil and gas operations, including also an assessment of the appropriateness of broadening liability provisions and submit it to the European Parliament and the Council.

After providing an overview on how (environmental, civil and criminal) liability concerning offshore accidents in oil and gas procedures is addressed in Europe, the report focuses mainly on three topics:

- i) the effectiveness of criminal liability for offshore accidents and the subsequent damages caused: According to the conclusions reached, European Commission is not yet in a position to provide a full report concerning the assessment of how the EU criminal measures provide effective offshore safety in Europe.
- ii) the appropriateness of civil liability regimes provided by Member States especially since there is a different level of liability among Member States: The report highlights that at the moment no assumption could be made and that the approach adopted in one Member State may be less effective than in other Member States.
- iii) the financial security instruments used in Member States and their availability: According to the Report, there seems to be a lack of uptake of financial security mechanisms to fully cover the more infrequent and costly offshore accidents.

As provided in article 40 of the Directive, the Commission shall prepare a first implementation report on this issue by 19 July 2019.

more news on Oil & Gas:

EU: ACER Publishes Study on Capacity Booking Platform Assessment

by Mira Todorovic Symeonides (Athens)

On 14 October 2015, ACER (Agency for the Cooperation of Energy Regulators) published the Study on Capacity Booking Platform Assessment which analyses the compliance of the current capacity booking platforms with the Network Code on Capacity Allocation Mechanisms (CA CAM) which should apply from 1 November 2015. The Study assessed the three existing capacity booking platforms: 1) PRISMA, which was founded by major European TSOs from Austria, Belgium, Denmark, Germany, France, Italy and the Netherlands and was launched in April 2013; 2) the GAZ-SYSTEM Auction Platform (GSA) which was launched by the Polish Gas TSO GAZ-SYSTEM S.A.; and 3) the Regional Booking Platform (RBP) held by the Hungarian Natural Gas Transmission Company (FGSZ) developed under an EU Hungarian-Romanian pilot project in 2014. According to the Study findings, at the time of assessment in August 2015, GSA and RBP, each, were not compliant on five out of twelve NC CAM legal requirements while PRISMA was not compliant on one out of twelve legal requirements. The Study also concludes that PRISMA is "functionally rich and is currently able to deal with more complex situations than both GSA and RBP". However, the cost of PRISMA services is typically higher for TSOs than the cost for either GSA or RBP.

EU: CEER and Energy Community Evaluate the European Commission Consultation over LNG and Gas

by Stefania Chatzichristofi (Athens)

On 29 September 2015, the Council of European Energy Regulators (CEER) published its view regarding the Consultation Paper of the European Commission on an EU strategy for Liquefied Natural Gas (LNG) and gas storage that was launched on 8 July 2015 with the scope to identify the challenges as well as the opportunities of LNG and gas in Europe. In its response, CEER highlighted: i) the perspectives affecting in three pillars (economically, socially and environmentally) the security of supply as well as the competitiveness of both LNG and gas in EU; ii) the possible challenges of LNG use; and iii) the further actions that should be taken from now on.

Furthermore, on 14 October 2015, the Energy Community (EnC) Secretariat published its view regarding the aforementioned consultation paper of the European Commission pointing out the very important role that LNG could play in Europe, even though the EnC Contracting Parties do not possess any LNG sources. It also stressed the fact that, because the penetration of LNG seems complicated due to lack of trust, it demands long term planning and long term commercial relationships among all market players. According to the EnC Secretariat, indirect access to LNG through EU Member States could be realised as a balance to the security of supply as well as a way to influence the prices of pipeline-based supplies. Two Contracting Parties of EnC, Ukraine and Bosnia and Herzegovina, also evaluated the consultation.

EU: ACER Recommends Amendment of NC CAM to Include Rules on Incremental Capacity

by Lazaros Sidiropoulos (Athens)

On 15 October 2015, ACER published its Recommendation No. 04/2015 to the European Commission on the amendment to the Network Code on Capacity Allocation Mechanisms in gas transmission systems, i.e. of Commission Regulation (EU) No 984/2013 of 14 October 2013 (NC CAM). The scope of the proposed amendments is primarily to establish a new regulatory framework in relation to incremental capacity. According to the definition provided, "incremental capacity" means a possible future increase in technical capacity or possible new capacity created where none currently exists that may be offered based on investment in physical infrastructure or long-term capacity optimisation and subsequently allocated subject to the positive outcome of an economic test, in the following cases: (a) at existing interconnection points, (b) by establishing a new interconnection point or points; (c) as physical reverse flow capacity at an interconnection point or points, which has not been offered before. The Recommendation also covers technical changes to the Network Code on Capacity Allocation Mechanisms with respect to the auction process and timings. The Recommendation is the result of a draft proposal, which was submitted to ACER by ENTSOG on 26 December 2014 for amending NC CAM with the aim to include incremental capacity in its scope, as well as of two respective public consultations conducted by ACER in this year.

EU: ACER Publishes Study to Assess Impact of Gas Network Codes

by Lazaros Sidiropoulos (Athens)

On 19 October 2015, ACER published on its website a study on monitoring and evaluation of the impact of the gas network codes and guidelines on the internal market. The objective of the study was to develop a set of indicators to assess the impact of the network codes and guidelines in achieving the higher-level energy market objectives put forward in the Third Energy Package. The network codes and guidelines that were considered included the following: congestion management procedures guideline (CMP GL), applicable since October 2013; capacity allocation mechanisms (NC CAM), applicable from November 2015; balancing network code (NC BAL), applicable from October 2015; harmonised transmission tariff structures (NC TAR), currently being developed; and incremental capacity amendment (INC), also currently being developed. Several issues were examined in relation to achieving the desired effects of Network Codes as well as of advancing high-level policy goals (i.e. effective competition, efficient market functioning, market integration and non-discrimination); these issues mainly referred to congestion management procedures, capacity allocation mechanisms, incremental capacity, balancing and tariffs. The indicators which were developed by the study in this regard will be used by ACER in its annual Market Monitoring Report (MMR) to measure the economic impact of Network Codes on the internal gas market as envisaged by the Third Energy Package.

Energy Community/ BiH: Measures against BiH for Failure to Adopt the Second Energy Package for Gas

by *Nebojsa Milanovic (Banja Luka)*

During the 13th Energy Community Ministerial Council, which took place on 16 October 2015 in Tirana, the Council, for the first time ever, decided to impose sanctions against a Contracting Party. Namely, in the Dispute Settlement Procedure initiated by the Secretariat in 2011 under the no ESC-8/11 the Secretariat concluded that BiH failed to fulfil its obligations under the Energy Community Treaty by not having put in place appropriate legislation in the gas sector, particularly for the lack of legislation and regulatory institutions at the state level which the Secretariat considered to be an obstacle to the development of the gas sector both on national and regional level. The non-compliance also includes the lack of regulatory authorities for gas in the Federation of Bosnia and Herzegovina, the lack of proper legal, functional and account unbundling in either entities, the lack of properly set and published network tariffs, issues related to exemptions for new infrastructure, and the lack of market opening in line with the deadlines set in the Gas Directive 2003/55/EC. Currently, the Republika Srpska (one of the two Entities of BiH) has already adopted the Law on Gas, but the adoption of such law in the other entity, Federation of BiH, is still pending. Also the new Law on Gas on the state level is to transfer certain regulatory and monitoring issues of the gas sector from the entity to the state level, more precisely to the State Electricity Regulatory Commission. However there is no political will in the Parliament of BiH for such transfer of authorisations. The measure adopted by the Council consists in the suspension for the period of one year of the right of BiH to participate in votes for Measures and Procedural Acts adopted in regard to the EnC budget issues (Chapter VI of the Title V of the Energy Community Treaty).

Ukraine: Draft Law on Reduction of Rent Payments for Gas Extraction Companies Passes First Reading

by *Tetyana Vyshnevska (Kiev)*

On 6 October 2015, the draft law no. 2835 on Amending the Tax Code of Ukraine Concerning the Reduction of Gas Prices for Population (the Draft) passed the first reading by the Parliament. If adopted, the Draft shall considerably decrease the rates of rent payable by state owned and private gas extraction companies, including under joint venture agreements, for exploitation of the ground under the surface for extraction purposes. Notwithstanding the title, the Draft provides for reduction of rent rates for both the companies which sell their products to PJSC Naftogaz of Ukraine to cover the needs of the population and the companies whose product is sold to business consumers or has other commercial use. As of now, the Draft is being prepared for the second reading by the Parliament.



Ukraine: Government Approves the Procedure for Creation of Reserve Stocks of Natural Gas

by *Tetyana Vyshnevska (Kiev)*

On 30 September 2015, the Cabinet of Ministers of Ukraine issued Resolution no. 795 on Approval of the Procedure for Creation of Reserve Stocks of Natural Gas. The Resolution provides gas supplying companies and gas extraction companies performing natural gas supply with a mechanism to create and use their reserve stocks of natural gas in accordance with the Natural Gas Market Law, and annuls the corresponding Procedure approved by the Government in late 2012. The Resolution has come into force on 10 October 2015 but will be applicable to said gas extraction companies starting 1 January 2016.

Energy Community/ Ukraine: Report on Performed Monitoring of Security of Natural Gas Supply

by *Tetyana Vyshnevska (Kiev)*

On 8 October 2015, the Report for 2015 on the Results of Monitoring Security of Natural Gas Supplies (the Report) was published at the web page of the Energy Community (EnC) dedicated to Ukraine. The Report presents an updated Security of Gas Supply Statement of Ukraine prepared by the Ministry of Energy and Coal Industry of Ukraine in compliance with relevant Guidelines of the EnC Secretariat. The Report gives an insight into the current state of the natural gas sector in Ukraine, including, inter alia, the legal framework in effect and under development; the statistics on natural gas production, consumption, import and transit as well as the gas storage and gas transportation system capacity; activities on the diversification of gas supply routes; the ongoing reform of the NJSC Naftogaz of Ukraine; infrastructure and interconnection projects. As a Contracting Party to the Treaty establishing the Energy Community, Ukraine is required to submit an updated Security of Gas Supply Statement to the EnC Secretariat on an annual basis.

Greece: Amendments to the Energy Law Regarding Opening of the Gas Market

by *Mira Todorovic Symeonides (Athens)*

Following the voting of the Law no. 4336/2015 on 13 August 2015 (OJ A 94/14.08.2015) by the Greek Parliament, authorising the Government to sign the new memorandum of understanding (MoU) and the respective loan agreement agreed between Greece and its international lenders, which initiated the reform of the Greek retail gas market, the Greek Parliament voted on 16 October 2015 for another law no. 4337/2015 (OJ A 129/17.10.2015) on measures for the application of the MoU. The new law amends some provisions of the Law 4001/2011 regulating the Greek energy sector which apply to the gas transmission and distribution. The amendments refer particularly to the definition of the eligible customers, the separation of the gas transmission and distribution networks, some exceptions from the obligation to issue operation license for the transmission or distribution grid; and a clarification that the tariffs to be developed by the gas distributors in accordance with the Pricing Methodology for Basic Services, to be adopted by the Greek Energy Regulatory Agency (RAE) according to Law n. 4336/2015, shall be submitted to RAE for approval within one month from the issuing of the Methodology.

RENEWABLES

Serbia: Public Consultation on Proposed Renewable Energy Incentive Measures



by Vuk Stankovic (Belgrade)

On 28 September 2015, the Ministry of Mining and Energy of the Republic of Serbia launched a public consultation, which was completed on 19 October 2015, on the following proposed set of bylaws (Decreets) concerning renewable energy incentive measures: (i) Decree on standard model agreements on purchasing of the electricity (PPA Decree); (ii) Decree on Feed-in Tariffs; and (iii) Decree on conditions and procedure for acquiring the status of privileged producers (PP Decree). The aim of the public consultation was to collect the views and suggestions from lenders, developers, industry associations and other experts with respect to the proposed draft Decreets. Pursuant to Article 79 of the Energy Law (*Official Gazette RS No 145/2014*) (Energy Law), the

Government of the Republic of Serbia is required to adopt the Decreets until 31 December 2015.

PPA Decree: Unlike the previously developed draft three PPAs, the PPA Decree introduces one model of PPA whose content is conform to law and slightly reshaped in line with the financing and investment needs. Temporary privileged producers may sign a PPA with the guaranteed supplier (Offtaker) in which case it would be an agreement with delayed effect (the Feed-in Tariffs would apply only when and if such producer acquires the permanent status of privileged producer). The most significant changes however are the newly introduced provisions in relation to the stabilisation clause, the step-in clause and the force majeure clause. The stabilisation clause applies in the event of changes in regulation which may affect the profitability of the project. In that regard and in order to mitigate the damages, the Offtaker would be obliged to enter into an addendum to the PPA agreement, proposed by the privileged producer. However, a condition precedent for such an addendum is the adoption of the new Decree on Feed-in Tariffs which should introduce new financial settlements.

The step-in option clause applies to both contracting parties, which may assign their rights and obligations out of the PPA's to a third party. Such assignment has to be completed in line with the Energy Law requirements for the switching of Offtaker and the assignment of the privileged producer's status.

One significant amendment in comparison with the previous drafts, is the definition of Force Majeure which extends substantially the meaning of natural disasters..

Among other significant changes, it should be noted that pledge over receivables is subject to the consent of the Offtaker and that the Offtaker is obliged to purchase electricity under Feed-in tariffs during the trial work period of the power plant. Additionally, disputes between the contracting parties may be resolved exclusively before the Commercial Court in Belgrade if the agreement is concluded for a plant connected to the distribution system.

Feed-in Tariffs Decree: The Feed-in Tariffs Decree amends the existing support scheme. The Feed-in Tariffs for hydro energy, bio-gas and gas from waste water treatment plants or landfill gas are increased, whereas the Feed-in Tariffs for photovoltaic energy are slightly decreased. The tariffs for gas cogeneration power plants are increased for installed capacities up to 2 MW.

In addition to the new pricing scheme, the Feed-in Tariffs Decree also contains a stabilisation clause in the event of changes in regulation which may affect the profitability of the project. Namely, if the tax, energy or any other regulations that may affect the profitability of the project are changed, the privileged producer may initiate the revision of the Feed-in Tariffs before the Ministry of Energy. On the other hand, the Ministry may issue a recommendation to the Government that the requested changes should not be adopted if such revision is considered to violate public interest. Moreover, the powers of the Government in this regard are not regulated therein.

PP Decree: The PP Decree introduces wider and more accurate definitions in regard to the capacity of power plants. Pursuant to the PP Decree, the minimum annual level of efficiency in cogeneration power plants is reduced by 5%, whereas the required percentage for primary fuel or primary energy on annual level are defined for each category of privileged producers.

more news on Renewables:

Croatia: Renewable Energy Sources and High-Efficiency Cogeneration Act

by Sanja Tolj Par (Zagreb)

On 18 September 2015, the Croatian President promulgated the Renewable Energy Sources and High-Efficiency Cogeneration Act (100/2015). This is the first time that the RES sector is regulated by a special law, considering that until now the sector was regulated by the Energy Act, the Regulation on fees to support electricity production from RES and cogeneration, the Ordinance on the Use of Renewable Energy Sources and Cogeneration and the Ordinance on Acquiring the Status of Privileged Electricity Producer. This Act regulates the planning for the development of the electricity market from RES and cogeneration, establishes measures to increase electricity produced from RES and determines the feed-in tariff system to remunerate RES producers.

BiH: The Parliament of Republika Srpska Adopts Amendments to the RES Law

by Nebojsa Milanovic (Banja Luka)

The Parliament of Republika Srpska (one of the two Entities of Bosnia and Herzegovina) adopted the Law on amendments to the Law on Renewable Energy Sources and Efficient Cogeneration, published in the Official Journal 79/2015 as of 10 September 2015. The Law on Amendments changes the distribution of the funds collected for the support of RES. These funds were used for: a) payment of feed-in premiums, b) RES balancing expenses, c) work expenses of the RES operator and d) development of measures of energy efficiency. The amendments change the use of the funds described under (d) by adding that this part of funds will from now on also include the support of the production from RES. In addition, until now 5% of the collected funds were used for the financing of the Fund for Protection of Environment and Energy Efficiency of the Republika Srpska (the Energy Efficiency Fund), for the support of promotion of energy efficiency (the use of funds described under [d] above). This contribution is now increased to 10% but the Energy Efficiency Fund will from now on undertake to promote RES as well, not only energy efficiency.



COMPETITION - STATE AID

EU: The Court of Justice Upheld a European Commission Decision Concerning Illegal State Aid Granted to Electricity Generators

by *Viktoria Chatzara (Athens)*

On 1 October 2015, the Court of Justice of the European Union (CJEU) published its decision on an appeal brought before it by Electrabel SA and Dunamenti Eromu Zrt. and against the decision of the General Court, which in its turn had upheld a decision of the European Commission ordering the recovery of illegal state aid, provided by the Hungarian state on electricity generators. More specifically, at the time the General Court examined the facts of the case, Dunamenti Eromu was an electricity generator, approximately 75% owned by Electrabel and approximately 25% owned by MVM, a public undertaking. On 10 October 1995, just before it became private, Dunamenti Eromu entered into a power purchase agreement (PPA) with MVM, according to which all or a substantial part of the generation capacities of the power plants covered by the agreement were reserved for MVM and MVM was required to purchase a specific minimum quantity of electricity from each power plant and per each year. This PPA entered into force in 1996, i.e. before the accession of Hungary to the EU, and remained in force even after its accession. CJEU explicitly stated in its ruling that in the event of a state measure adopted prior to the state's accession to the EU but still applicable after such accession, the date of accession is the date on which such an aid measure shall be assessed in the light of the EU rules concerning state aid.



The Court dismissed Dunamenti Eromu's appeal by rejecting all the grounds on which it was based. More specifically the Court ruled that the arguments concerning the sale of Dunamenti Eromu to Electrabel were not of relevance, since the state aid concerned was not a consequence of the sale but of the PPA. Further to this conclusion, the fact that Electrabel bought Dunamenti Eromu, which had benefited from the illegal state aid, paying the market price, which included an assessment of the aid, could not be used in order to argue that the illegal state aid had been fully repaid, due to the fact that after the purchase, Dunamenti Eromu retained its autonomous legal personality and continued carrying out the activities subsidised by the state aid. Thus, Dunamenti Eromu continued benefiting from the competitive advantage linked to the specific aid and, as such, should be obliged to repay it. Even if it could be argued that the Hungarian State was able to benefit from the privatisation of Dunamenti Eromu, the company would continue having the competitive advantage the state measure had incurred and it should be obliged to repay the illegal state aid, in order for the relevant distortion in competition to cease to exist.

ENERGY INFRASTRUCTURE

Energy Community: Ministerial Council Adopts TEN-E Regulation

by Eleni Boutla and Dimitris Nisanakis (Athens)

On 16 October 2015, the 13th Energy Community Ministerial Council, which took place in Tirana, adopted the Decision D/2015/09/MC-EnC which implements the Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure (TEN-E regulation) with certain adaptations. This should contribute to the improvement of the investment climate in the Energy Community, regarding the Projects of Energy Community Interest by establishing a comprehensive regulatory and legal framework for streamlining the permitting, regulatory and cost-allocation procedures for these projects.

Chapter I of the Decision contains respective Amendments to the Energy Community Treaty. Chapter II of the Decision contains articles concerning the implementation of the energy acquis and general harmonisation under Article 24 of the Energy Community Treaty. Chapter III contains provisions regarding the ad-hoc harmonisation with regard to: the subject matter and the scope of the Regulation, definitions, a list of projects and criteria for Projects of Energy Community Interest ("PECI"), implementation and monitoring, PECI coordinators, the 'priority status' of PECI, the organisation of the permit granting process, transparency and public participation, duration and implementation of the permit granting process, energy system wide cost-benefit analysis, and enabling investments with cross-border impact.



more news on Energy Infrastructure:



EU: European Commission Publishes Report on the Progress of Implementation of Energy Programmes

by Dimitris Nisanakis (Athens)

On 8 October 2015, the European Commission published a report to the Council and the European Parliament on the implementation of the European Energy Programme for Recovery (EEPR) and the European Energy Efficiency Fund (EEEF). Following the report of 2014, this report focuses on the progress made in implementing the projects of EEPR and the EEEF between 31 August 2014 and 30 June 2015. The projects of EEPR are divided into three categories: 1) gas and electricity infrastructure projects, 2) Offshore Wind Energy (OWE) projects and 3) carbon capture and storage projects. According to the report, 34 out of 59 projects were completed until June of 2015, with gas and electricity infrastructure projects being the most successful. Regarding the EEEF, whose purpose is to provide financing for energy efficiency, renewable energy and clean urban transport projects, the report shows that it has made some very profitable investments on certain projects and states that it will also seek to increase its geographical coverage in particular in Central and Eastern Europe.

Energy Community: Secretariat Launches Tender on Assessment of Projects of Energy Community Interest

by Stefania Chatzichristofi (Athens)

On 20 October 2015, the Energy Community (EnC) Secretariat launched a tender for technical support to the EnC Secretariat in the assessment and selection of Projects of Energy Community Interest in electricity, gas and oil as well as in smart grids. The content of this tender is based on Regulation (EU) No. 347/2013 on guidelines for trans-European energy infrastructure (TEN-E regulation) as adopted, with certain adaptations, through the Energy Community Ministerial Council Decision D/2015/09/MC-EnC on 16 October 2015. The Consultant is expected to provide technical support to the EnC especially with regard to the identification and evaluation of projects in the Contracting Parties of EnC that are the most beneficial for the EnC, called Projects of Energy Community Interest (PECIs), by combining the method of cost-benefit as well as a multi-criteria analysis, using also market and network models in both electricity and gas market. The tender procedure shall be open until 23 November 2015.



ENERGY EFFICIENCY

Energy Community: Ministerial Council Adopts Energy Efficiency Directive

by Dimitris Nisanakis (Athens)

On 16 October 2015, the 13th Energy Community Ministerial Council, which took place in Tirana, adopted through the Decision D/2015/08/MC-EnC, the Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency. The Directive aims at the promotion of energy efficiency throughout the Contracting Parties by taking certain measures and meeting certain energy targets. The primary goal of the Directive is the energy efficiency to reach 20% in all Contracting Parties by 2020. Among others, provisions are included regarding the renovation of public and private buildings aiming to maximise the energy efficiency by minimising the energy consumption. Concrete measures are provided as a means of implementation of the exemplary role of public buildings and energy efficiency criteria are introduced for the public procurement procedures. Further, via certain energy efficiency obligation schemes, energy distributors and energy suppliers will need to achieve minimum energy savings of annual sales to final consumers. Moreover, actions will be necessary in order to inform the public about the purpose and the benefits of the Energy Efficiency Directive.



The Contracting Parties of the Energy Community will have to make all the necessary arrangements for the transposition of the Energy Efficiency Directive in their legislation, as this was done by the EU Member States. This will require the Contracting Parties to further harmonise their energy efficiency legislation in line with this Directive and to adopt energy savings obligation schemes for energy distribution and retail companies, promote efficiency in heating and cooling and co-generation and apply yearly targets for the renovation of central government buildings.

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