

Monthly energy law headlines from the EU & the SEE countries of the *Rokas* network

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the highlight...

ENERGY MARKETS

EnC: Implementation of the EU acquis on VAT

On 28 August 2017, the Energy Community (EnC) Secretariat published a study analysing the need for implementation of EU acquis on value-added-tax (VAT) in the EnC's Contracting Parties (CP). The key findings of the Study support the harmonization of CPs legislation and practices in VAT legislation based on the respective EU acquis. The harmonization is expected to benefit cross-border cooperation and market integration in general.

INFRASTRUCTURE

ENTSOG: TSOs Publish Southern Corridor Gas Regional Investment Plan 2017-2026

On 19 September 2017, the Transmission System Operators (TSOs) of Austria, Bulgaria, Croatia, Greece, Hungary, Italy, Romania, Slovakia and Slovenia, representing the Southern Corridor Region, published the third edition of their Gas Regional Investment Plan (SC GRIP). The SC GRIP for 2017-2026, drafted in accordance with the requirements of the Regulation (EC) 715/2009 on conditions for access to the natural gas transmission networks, is based on the SC GRIPs of 2012 and 2014, complements the Ten Year Network Development Plan 2017 and is consistent with the latter.

COMPETITION - STATE AID

EU: Court of Justice Rules on Spanish Law regarding Taxation of Energy products and Electricity

On 20 September 2017, the First Chamber of Court of Justice of the European Union (CJEU) issued its Decision on a request for preliminary ruling submitted by the High Court of Justice of Castilla-La Mancha, Spain (Tribunal Superior de Justicia de Castilla-La Mancha), in the context of an action brought to it by, on the one hand, Elecdey Carcelen SA, Energias Eólicas de Cuenca SA, Iberenova Promociones SAU and Iberdrola Renovables Castilla La Mancha SA, and, on the other hand, the Comunidad Autónoma de Castilla-La Mancha (Autonomous Community of Castilla-La-Mancha, Spain) concerning a levy imposed on wind power plants designed to produce electricity.

RENEWABLES

Ukraine: Different Amendments Concerning RES Developers

On 14 September 2017, the National Energy and Utilities Regulatory Commission (NEURC) issued Resolution No. 1118 on Approval of Amendments to the Model Power Purchase Agreement. On 29 August 2017, NEURC abolished its controversial Resolution No. 148 of 31 January 2017 on Setting the Value of the Cost Per Unit for Non-Standard Grid Connection of Electrical Installations for 2017.

Energy Markets **what's new...**

Ukraine: Government Approves Updated Energy Strategy until 2035

by Tetyana Vyshnevska, (Kiev)

On 18 August 2017, the Cabinet of Ministers of Ukraine adopted Resolution No. 605-r, approving the updated Energy Strategy of Ukraine until 2035 titled "Security, Energy Efficiency and Competitiveness". The new Energy Strategy outlines the course of development of the energy industry and related sectors, including the strategic objectives to be achieved by 2035, such as: integration with the European energy markets, substantial reduction of energy intensity of the domestic economy, diversification of sources and routs of energy supply, significant increase in production of conventional and renewable energy sources etc. Successful implementation of the new Energy Strategy requires adoption of new and amendment of existing legislation as well as elaboration of certain sector development programs. Within the following four months the Ministry of Energy and Coal Industry and other central executive authorities shall draft and submit for approval by the Government an action plan for implementation of the new Energy Strategy. The Resolution is effective as of the date of its issue.



ENERGY MARKETS highlight...

EnC: Implementation of the EU acquis on VAT

by Mira Todorovic Symeonides, (Athens)

On 28 August 2017, the Energy Community (EnC) Secretariat published a study analysing the need for implementation of EU acquis on value-added-tax (VAT) in the EnC's Contracting Parties (CP). The key findings of the Study support the harmonization of CPs legislation and practices in VAT legislation based on the respective EU acquis. The harmonization is expected to benefit cross-border cooperation and market integration in general. In April 2017 the EnC's Permanent High Level Group (PHLG) tasked the Secretariat to initiate the process of harmonizing VAT and public procurement legislation in the EnC based on the EU acquis. The next step will be harmonising the text of the VAT and public procurement directives adapted to the needs of the EnC CPs.



The main goal of the study was to assess VAT legislation in the EnC CPs in order to identify obstacles to market competition and market integration resulting from non-harmonised VAT rules in regard to the network energy activities and to propose measures for their harmonization. Harmonised VAT rules would apply to the supply and demand of gas and electricity both between the EnC CPs and the EU Member States (MSs) as well as among the EnC CPs. Thus the study first presents the provisions of the VAT Directive (Directive 2006/112/EC of 28 November 2006, as amended) and the respective implementation Council Regulation (no. 282/2011 of 15 March 2011) establishing the common system of VAT in EU, relevant for the energy sector (e.g. import of electricity and gas is exempted, the place of supply is of the receiver, reverse charge mechanism). It further describes the VAT rules in each EnC CP and comments

if they present obstacles for cross border trade and competition.

As regard the level of harmonization, the study analyzed the following three scenarios: a) no harmonisation of VAT rules between the CPs and with the EU rules, b) implementation of the minimum EU requirements in order to enable better functioning of the electricity and gas market, and c) implementation of the VAT Directive in full. It excludes the first scenario as it would not bring progress and the last scenario as not realistic because various reporting mechanisms and reporting institutions from the VAT Directive exclusively target EU MS. In regard to the second scenario, it recommends the following the minimum requirements: uniform treatment of electricity and gas as goods in the VAT law (tangible asset); recognizing the subject of a taxable dealer in the VAT law provisions on supply of gas and electricity; definition of the place of supply (B2B) of gas through the natural gas distribution system or of electricity to a taxable dealer, as the place where that taxable dealer has established his business; definition that the supply of electricity at the final stage from traders and distributors to the final consumers should be taxed at the place where the customer actually uses and consumes the goods (B2C); definition of place of supply of services to taxable person which should be defined as a place where taxable person has established his business; VAT should be refunded to taxable persons who are not established within the territory of the CP, while the VAT law should define requirements for VAT refund – the institute of the Fiscal Representative or direct Tax Registration; and VAT exemptions of exportation of gas through a natural gas system or any network connected to such a system or fed in from a vessel transporting gas into a natural gas system or any upstream pipeline network, and of electricity with the right to VAT deduction.

Finally, it analyses the VAT treatment of specific energy issues such as: supply of electricity and gas by non-resident suppliers; Tax Agent or Fiscal Representative; Impact on the EU suppliers; Treatment of backhaul capacity service; and treatment of net metering for generation of electricity by end-consumers (self-generation).

Electricity what's new...

EU: Range of Prices in the Day-ahead and Intraday Coupling

by *Kostis Krimizis, (Athens)*

On 24 August 2017, the Agency for the Cooperation of Energy Regulators (ACER) launched a consultation, which lasted until 15 September 2017, regarding the maximum and minimum clearing prices in the single Intraday and Day-ahead coupling. On the basis of the CACM regulation and keeping in mind that the free price formation remains always a basic goal, the ACER illustrates the obligations of the Nominated Electricity Market Operators (NEMOs) to develop proposal for harmonized maximum and minimum clearing prices for Single Day Ahead Coupling (SDAC) and Single Intra Day Coupling (SIDC) just as technical limits, while taking into account the Value of Lost Load (VoLL) and the recommendations of National Regulatory Authorities (NRAs) Transmission System Operators (TSOs). All concerned stakeholders are invited to express their opinions about the proposed amendments, which the ACER has grouped in three main options, even at the level of adopting the suggested automatic adjustment rules for SDAC and SIDC. The date after which the new automatic adjustment will be implemented is 1 January 2019.

Albania: Balancing Mechanism

by *Odisea Xhelita, (Tirana)*

On 18 August 2017, ERE (Energy Regulatory Entity), by virtue of the Decision No.124/2017 has commenced the procedures of approving the temporary rules for the electric energy balancing mechanism (the Regulation). The Regulation shall be drafted by TSO (Transmission System Operator) with the technical support of the Energy Community Secretariat (ECS), after considering the opinions of the stakeholders. ERE's Decision No.122/1701 was published on the Official Gazette on 30 August 2017.

Albania: Harmonized Capacities Allocation Rules 2018 - SEE CAO

by *Odisea Xhelita, (Tirana)*

On 18 August 2017, ERE (Energy Regulatory Entity), by virtue of the Decision No.125/2017, has commenced the procedures for approving the harmonized rules of interconnection allocation capacities (HAR) for the year 2018 for the Office for Coordination of Capacity Auctions Interconnection - South East Europe (SEE CAO) (the Regulation of HAR). The Regulation of HAR shall be drafted by the respective Transmission System Operators (SEE) and the Coordinated Auction Office for the South East Europe (SEE CAO) in accordance with Article 51 of Commission Regulation (EU) 2016/1719 of 26 September On the Establishment of a Guideline on Future Capacities Allocation (FORWARD CAPACITY ALLOCATION - FIA). ERE's Decision No.125/2017 was published on the Official Gazette on 30 August 2017.

Greece: Public Consultation on Transitional Capacity Mechanism

by *Mira Todorovic Symeonides, (Athens)*

On 6 September 2017, the Regulatory Energy Agency (RAE) launched a public consultation, which lasted until 22 September 2017, regarding the main principles of the transitional Capacity Mechanism for the Interconnected System, which should apply the conclusions of the Study on the System Needs for the Flexibility Service for the period 2018-2027, performed by the electricity TSO (ADMIE). It should be noted that in 2016 (in the period between 25 July 2016 and 16 September 2016) RAE organized a public consultation on the Permanent Capacity Mechanism which should have replaced the temporary Capacity Mechanism in place at the time. The purpose of the Capacity Mechanisms is to secure sufficient capacity during the reform of the electricity market in compliance with the EU Target Model. In regard to the new transitional Capacity Mechanism, RAE proposes that it lasts until the implementation of the EU Target Model in Greece, which would consist of the four markets: day-ahead, intraday, forward and balancing market. The flexibility service should be implemented in compliance with the ADMIE study which provides for two types of products: three hours flexibility which for the year 2018 should not exceed 1.601 MW and one hour flexibility which for the year 2018 should not exceed 2.662 MW (the total of 4.263 MW). The production units offering the flexibility service must have certain technical capabilities to participate in this mechanism. In particular, within three hours of receiving an order from ADMIE, they should be able to increase output by at least eight megawatts per minute for a minimum response duration of three hours. The eligible producers are open-cycle and combined-cycle gas turbines, hydropower plants and combined heat and power units (for the part that they do not receive renewable energy sources support). The selection of the production units will be through a competitive procedure. The proposed regulated maximum price is for the flexibility service is 25.000€/MW. The funds for remuneration of producers for this service should be collected from the Load Representatives and should be determined on the bases of the load they represent at the peak hours.

Greece: RAE's Public Consultation regarding Amendments on the Greek Electricity Management Transmission Code

by *Stefania Chatzichristofi, (Athens)*

On 7 September 2017, the Greek Energy Regulatory Authority (RAE) launched its public consultation that remained open until 22 September 2017, regarding amendments on the Electricity Management Transmission Code, as published in the Government Gazette no. B'103/31.01.2012 and more precisely, concerning amendments on the implementation of the necessary extension projects of the grid for its connection with the Distribution system. RAE shall publish a list of the respective stakeholders that participated in the consultation as well as the content of their contribution.

Greece: Increased Quantities at the Forth NOME Auction

by *Mira Todorovic Symeonides, (Athens)*

On 20 October 2017, the Regulatory Energy Authority (RAE) launched a public consultation, which lasted until 25 October 2017, regarding the proposal of the Electricity Market Operator (LAGIE) that the remaining quantities of electricity for the year 2017 in the amount of 718 MW are sold on two auctions (one of 475 MW on 18 October 2017 and one of 243 MW on 15 November 2017) and not on the one already scheduled for 18 October 2017. It should be noted that the initially scheduled quantities for this auction, in compliance with the RAE Decision 619/2016, were 246 MW. They should be increased as a result of the amendments of the law 4389/2016 regulating NOME auctions by the law no. 4472/2017 (OJ A'74/15.05.2017) which increases the total amount of electricity scheduled for sale through NOME auctions in 2017 from 12% to 16% of the total amount of electricity of the Interconnected System for the year 2016; and due to the fact that the retail market share of the Public Power Corporation, which sells its electricity produced by HPP and lignite fired plants through NOME auctions, was not reduced to 75% as planned, but remains approximately 85%. The Decision regulating the 18 October 2017 auction is expected to be issued within the next days.

Greece: RAE's Decision n. 574/2017 on PSO Suppliers

by *Andriani Kantilieraki, (Athens)*

On 19 July 2017, Decision of the Regulatory Authority for Energy (RAE) no. 574/2017 regarding the procedure, terms and eligibility criteria of potential PSO Suppliers who were thereby invited to express their interest, was published in the Official Government Gazette no. 2481B/2017. This decision was issued by the implementation of the provisions of the Law on energy n. 4001/2011, as well as other laws and previous decisions of RAE regarding the appointment of the Public Service Obligation (PSO) Suppliers which are obliged to provide electricity to specific categories of consumers and are selected after the evaluation of their expression of interest. This Decision regulates the terms and conditions for the application for selection of a PSO supplier for the next 3 years starting from 23 March .2018. Thus is provides, among other: a) that RAE has the right to appoint an energy company with the biggest share in the market as the PSO supplier, in case other companies failed to express their interest until a provided deadline; b) the evaluation criteria of the proposals such as regarding the financial strength of candidates and their capacity to provide immediate and effective services; and c) the available legal remedies against a RAE's decision on the appointment of the PSO supplier.

EnC: Secretariat Requests Reopening of the Certification Procedure for Unbundling of EMS Serbia

by *Mirjana Mladenovic, (Belgrade)*

On 15 September 2017, the Energy Community Secretariat (ECS) requested from the Energy Regulatory Agency of the Republic of Serbia (AERS) to reopen the procedure of certification regarding compliance of the Serbian electricity transmission system operator Elektromreža Srbije (EMS) with the unbundling rules of the Third Energy Package. As we mentioned in our 51st issue of Energy Newsflash, on 4 August 2017 AERS adopted its decision no. 312-3/2016-C-I on the certification of EMS as the Serbian electricity TSO. Namely, the ECS requests the reopening of the certification procedure having in mind that changes of the legislation of the Republic of Serbia did not include the AERS Decision dated 26 January 2017 (this decision awarded certificate to EMS, with deadline of twelve (12) months and prescribed to EMS to undertake all necessary actions before competent authorities of the Republic of Serbia in order to ensure independence as TSO and to register its ownership rights on the objects of which the electricity transmission system is consisted of and to provide additional necessary documents) nor the ECS's Opinion 3/17 dated 15 June 2017 (by this opinion ECS concluded that EMS is not unbundled in line with the ownership unbundling model as prescribed by Article 9 of the Electricity Directive and that EMS is still directly and indirectly controlled by stakeholders active in the production and/or supply of natural gas or electricity). Even though the Republic of Serbia has changed the Law on Ministries, the ECS could not assess the impact on compliance of EMS with the unbundling rules of the Third Energy Package. Now, AERS shall initiate a new certification procedure upon reasoned ECS's request, all in accordance with Article 10 Paragraph 4 Item c of Directive 2009/72/EC and Article 103 Paragraph 2 Item 3 of the Energy Law of the Republic of Serbia.

Oil & Gas what's new...

EnC/Ukraine: A Case against Ukraine for Non-Compliance of its PSO with EnC Gas Acquis

by Tetyana Vyshnevska, (Kiev)

On 22 August 2017, the Energy Community Secretariat (ECS) sent an Opening letter to Ukraine, thus initiating Case ECS-2/17. The case concerns alleged non-compliance of Ukraine's public services obligation (PSO), imposed on certain participants of the natural gas market by virtue of the Government Resolution No. 187 of 22 March 2017, with the requirements of the EnC acquis on natural gas, in particular, with the criteria set out in Directive 2009/73/EC concerning common rules for the internal market in natural gas. According to the ECS, the PSO is not proportionate, goes beyond what is necessary to secure the general economic interest, lacks legal certainty and maintains a monopoly position of the incumbent gas suppliers. In order to assist Ukraine in the reform of its current PSO, on 25 August 2017 the ECS and the World bank provided Ukrainian authorities with a draft resolution on PSO (accompanied by an explanatory note), compliant with the EnC gas acquis, which aims to ensure that the most vulnerable costumers are supplied with natural gas, yet they are able to switch suppliers and the competition on the gas market enhances.



Greece: Approval of Repsol's Participation in the Concession Agreement of Ioannina

by Theodoros Theodorou, (Athens)

On 6 September 2017, the Ministry of Environment and Energy approved the participation of Repsol Exploracion Ioannina S.A in the exploration and exploitation of hydrocarbons in the terrestrial area of Ioannina. More specifically, the Minister of Environment and Energy has signed the relevant Ministerial Decision by which 60% of Energean Oil & Gas was transferred to Repsol in the lease agreement signed between Petra Petroleum INC and the Hellenic State.

Greece: Cooperation between DESFA and the Athens Exchange

by Dafni Siopi, (Thessaloniki)

On 14 September 2017, the Hellenic Gas Transmission System Operator S.A (DESFA) signed a Memorandum of Understanding (MoU) with the Athens Exchange Group (ATHEXGROUP) regarding the creation of a wholesale gas market. The cooperation aims mainly to bring together expertise and infrastructure owned by the two companies, ensuring relevant economies of scale for a more efficient and faster achievement of the strategic goal: development of a wholesale gas market in Greece and its expansion to South-Eastern Europe, within the framework of integration of the internal EU gas market. In this context, DESFA and ATHEXGROUP collaborate with their expertise and infrastructure, aiming to ensure the relevant economies of scale, for a more efficient and faster achievement of the strategic goal: development of a wholesale Gas Market in Greece and its expansion to South-Eastern Europe, in the context of the internal EU gas market integration.

Serbia: New Tariffs for Access to the Distribution Grid and for Public Supply

by Stefan Pavlovic, (Belgrade)

On 31 August 2017, the Council of the Energy Regulatory Agency of the Republic of Serbia (AERS) on its session adopted a decision on the approval of (i) decisions on the prices of access to the natural gas distribution system adopted by the gas distribution system operators ("DSOs") (23 decisions in total) and (ii) decisions on the prices of natural gas for public supply adopted by the gas public suppliers (24 decisions in total). The above-mentioned decisions of DSOs and public suppliers were published in the Official Gazette of the Republic of Serbia no. 83/17 and 84/17 after obtaining the approval of the AERS. It should be noted that the new tariffs for price calculation shall be applied from 1 October 2017. The changes in prices represent the result of the first price formation in accordance with the provisions of (i) Methodology for determining the price of access to the natural gas distribution system (Official Gazette the Republic of Serbia no. 105/16 and 29/17) and (ii) Methodology for determining the price of natural gas for public supply (Official Gazette the Republic of Serbia no. 75/14, 105/16, 108/16 correction and 29/17).

Infrastructure what's new...

Albania: Procedures for Approval of the Grid Investments Plan

by Odisea Xhelita, (Tirana)

On 6 September 2017, the Energy Regulatory Entity (ERE) by virtue of the Decision No.135/2017 has approved the Procedures of the Investments Plan by the Electric Energy Transmission (OST) and Distribution (OSSH) Operators (the Regulation). Both operators OST & OSSH shall submit for approval in front of ERE the investments plan for the following year together with the relevant performance report of the previous year. The investment plans should comply with the following criteria: i) to improve the services' quality; ii) to reduce the technical and non-technical losses; iii) to minimize the costs by reflecting all transparent and fair purchasing practices; iv) if the plan is sufficiently detailed and flexible; v) whether the investment plan has analyzed other non-included alternatives; vi) if the investment plan is in accordance with the development strategy of the electricity sector; g) if the plan is feasible within the defined deadline. ERE's decision came into force on 6 September 2017 and was published on the Official Gazette dated 18 September 2017.

Albania: Governance Program and Energy Investments Program

by Odisea Xhelita, (Tirana)

On 12 September 2017, the Minister of Energy during the presentation of the Government Program, stated that the scope of the Government is to continue the reforms and the investment program, aiming to ensure for the quality of energy supply. By 2021, the expected public and private investment in energy efficiency will be about € 80 million. During the next four years, €170 million should be invested to strengthen the generation capacities and dams' safety, which are managed by KESH. Meanwhile €160 million should be invested in the transmission sector, the most important of which is the construction of the 400 kV line between Albania and the FYR of Macedonia. This is the last of several investments in the interconnections with neighbouring countries. As regard the water resources, the expectancies of the Government for private investment reaches the amount of 400 million euros. One of the goals is the operation the Vlora Power Plant.



INFRASTRUCTURE highlight...

ENTSOG: TSOs Publish Southern Corridor Gas Regional Investment Plan 2017-2026

by Tetyana Vyshnevskya, (Kiev)

On 19 September 2017, the Transmission System Operators (TSOs) of Austria, Bulgaria, Croatia, Greece, Hungary, Italy, Romania, Slovakia and Slovenia, representing the Southern Corridor Region, published the third edition of their Gas Regional Investment Plan (SC GRIP). The SC GRIP for 2017-2026, drafted in accordance with the requirements of the Regulation (EC) 715/2009 on conditions for access to the natural gas transmission networks, is based on the SC GRIPs of 2012 and 2014, complements the Ten Year Network Development Plan 2017 and is consistent with the latter. The main objective of the SC GRIP is to provide stakeholders with an overview of the prospective development of the Regional gas market and pertaining gas infrastructure projects (transmission, underground storage and LNG). In particular, the SC GRIP provides: a) historic data and recent trends in the gas demand; b) an overview of the sources of gas supply as well as the trend and forecast of national production; c) a market analysis, including a comparison of import prices across the Region and capacity reservations at interconnection points (IPs), to identify the congested IPs; d) description of Regional projects (TAP, TANAP, East-Med, IGI-Poseidon, Eastring, IAP, IGB and ITB, BRUA and others), and analysis of their role in the development of the EU infrastructure and contribution to the security of supply and e) the results of market modelling and analysis of the infrastructure resilience in case of gas supply disruption (of the Ukrainian route in particular) and the sensitivity to price signals.

According to the SC GRIP, Italia remains the largest gas market, representing 63% of the total gas consumption in the Region. Historically the 9 countries of the Region made up about 25% of the total EU annual gas demand and, over the next decade, this share will moderately increase to 27.4% due to the present potential still to be exploited in several of the Region's gas markets and the perspectives for increase of gas demand for power generation in some countries (namely, Bulgaria, Croatia,

Hungary, Italy and Slovenia). The Regional increase in annual demand in 2017-2026 is expected to be 16%. Peak daily demand is growing in the majority of Regional States, indicating the need for potential infrastructure development. Most of the gas demand for power generation comes from Italy, followed, far behind, by Greece, Hungary, Romania and Croatia (no data regarding Austria and Bulgaria). It is evident that gas will play a key role as a back-up solution for power generation from renewable energy sources (RES), although the exact impact of RES on the gas demand is difficult to estimate. As regards supply sources, in 2015 the national gas production has covered 22% of the overall Southern Corridor demand. Romania is and shall remain the major natural gas producer in the Region, accounting for 46% of the Region's production in 2026. Gas supply to the Region as a whole is considered rather well diversified; however, Bulgaria, Croatia and Hungary are greatly dependant on the imported Russian gas, which constitutes over 80% of their gas supply.

The SC GRIP shows that several Regions' IPs have a high percentage of unused capacity both physically and contractually. These include the supply import points from non-EU members of Kipi (TK>GR) and Beregdaróc (UA>HU), as well as the IPs of Dravaszerdahely (HU>SI), Gorizia/Sempeter (IT>SI), Negru Voda 1 (RO>BG) and of the non-EU import points Mediesu Aurit (UA>RO) and Kipi (TR>GR). LNG terminals also receive little use. Some IPs like Csanádpalota (HU>RO), Oberkappel (AT>DE), Lanžhot (SK>CZ) and Jidilovo (BG>MK) have a large booked capacity but only a small part of it is physically used. Only the IP of Mosonmagyaróvár (AT>HU) and Negru Voda 2, 3 seem to be physically congested with flows often higher than firm capacity over the examined period (April 2014 - March 2016).

The stakeholders are welcome to provide the TSOs with their comments and suggestions that would help improve the next edition of the SC GRIP.

Competition - State Aid **what's new...**

[EU/SA.47412: Netherlands State Guarantee Scheme Found not to Constitute State Aid](#)

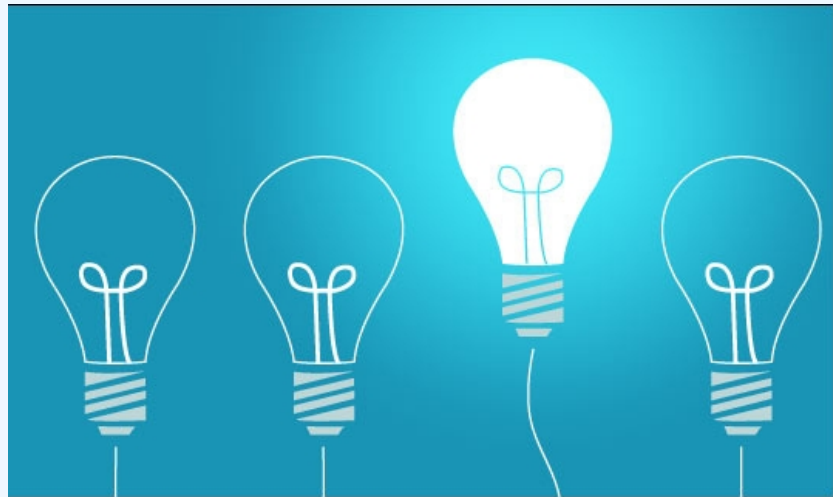
by *Viktorija Chatzara, (Athens)*

On 15 September 2017, the Commission's decision dated 17 July 2017 on a state guarantee scheme called "Energy Transition Financing Facility" (ETFF) notified by the state of Netherlands, was published on the Official Journal of the European Union. The object of the ETFF is to assist in the Dutch Government's policy of transition towards a more sustainable economy, and concerns the so-called "risky projects", such as geothermal or energy savings in energy intensive industries projects, the demand for the financing of which exceeds the supply that the credit institutions offer. In the context of the ETFF, undertakings that are the originators of such projects will create a special purpose vehicle (SPV), one for each project, the financing structure of which will compose of 15% equity to be provided by the originator of the project, up to 15% subordinated debt to be provided by a bank, whereas the remainder 70% of senior loans will be provided by other lenders. The ETFF will guarantee the subordinated loans granted by banks, up to an amount equal to 80% of the subordinated loan amount. With respect to the remuneration of the subordinated loans, their pricing will follow market based appraisal of the borrowers' creditworthiness, whereas the pricing will be submitted to the State credit committee for review, which will be able to instruct the bank to adjust the conditions of the loan. The State guarantee provided under the ETFF will be remunerated partially by a periodic guarantee fee paid by the bank providing the subordinated loan and calculated on the basis of the actual interest rate charged by the bank to the SPV. In addition to this periodic fee, the bank will pay 50% of a closure fee, provided that the total closure fee paid by the SPV is higher than 0.5% of the loan amount. Taking all the conditions of the ETFF into account, the Commission concluded that all the criteria for a state measure to be free of aid are met, and thus stated that the proposed State guarantee scheme does not fall into the scope of the state aid EU law provisions.

[EU/ SA.42838: Commission Approves French Support Scheme for Renewable Tidal Plant](#)

by *Stefania Chatzichristofi, (Athens)*

On 15 September 2017, the European Commission's Decision dated 2 June 2017, on the state aid case no. SA. 42838 regarding a French support plan for the construction of a tidal energy plant at Raz Blanchard, was published in the Official Journal of the European Union. The Commission, after evaluating under the guidelines on State Aid for environmental protection and energy 2014-2020 the said measure, which was approved as the NEPTHYD tidal energy pilot farm that and is expected to be commissioned by the year 2019 and shall operate for twenty years connected to the French power grid, concluded that the measure is in compliance



with the internal market and thus, decided not to raise any objections. More precisely, the European Commission decided that the said investment aid was carried out through open and transparent criteria since the NEPTHYD project was selected in a two-stage tender procedure. France plans to support the construction of this plant, through a direct grant and repayable advances that will be reimbursed in case the technology proves successful. Moreover, each unit of energy produced will receive a feed-in tariff. The Commission found that the project supports market entry of a novel RES technology. Moreover, the aid will be limited to the cost of producing electricity from such a plant, which will ensure that the operator is not overcompensated. The Commission therefore concluded that the project will promote the use of electricity generated from RES, while limiting the distortions of competition caused by the public funding.

EU/SA.36181: Commission Dismisses Complaint against Alleged aid by the Netherlands State to Electric Vehicle Fast Charge Stations

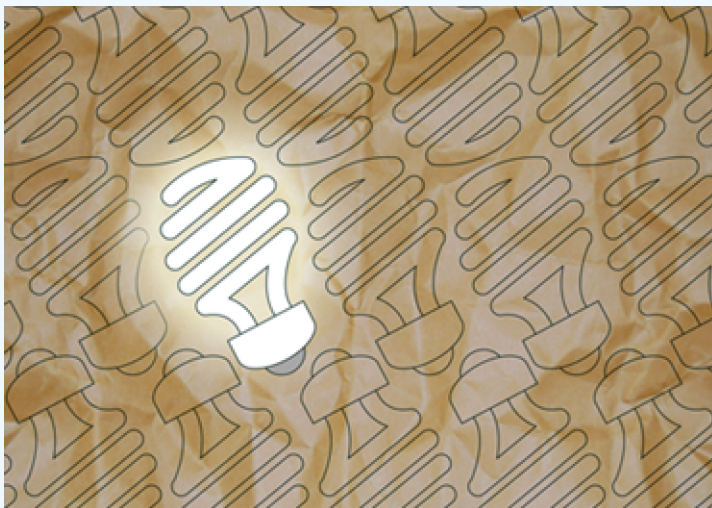
by *Viktoria Chatzara, (Athens)*

On 15 September 2017, the Commission's decision of 22 May 2017 on state aid case No. SA.36181 was published in the Official Journal of the European Union. The decision refers to alleged state aid measure of the Dutch State in favour of electric vehicle fast charge stations, and was taken following a relevant complaint submitted by the Association for Private National Route Filling Station Concession (VPR). Until 2011, three basic facilities were recognized by the Dutch State: i) filling stations, ii) roadside restaurants, and iii) combined service facilities in rest areas along the national route network. In 2011, with the aim to encourage the setting and operation of electric charging points in rest areas, in the context of the Action Plan for the promotion of electric transport, the Dutch government recognized electric charging points as the fourth such basic facility. Whereas operators of the initial three basic facilities were obliged to pay a usage fee (rent or ground rent) to the Dutch State, operators of electric charging points were granted permission in the form of tenancy agreements against a rent equal to EUR 0,00 until 1 January 2016; in 2016 a re-evaluation would take place on the basis of the actual development and sale of electricity at charging points alongside national roads. To be noted that operators of the initial three basic facilities were also permitted to install an electric charging point, following a permit application, for which they would not be required, until 1 January 2016, to pay an additional usage fee, as applicable on the new operators as well. The Commission took into account all the particular circumstances of the case, including the arguments of the Dutch authorities, especially concerning the existing volume of electricity fuelled vehicles in Netherlands and, thus, of the required consumption and supply of electric charging stations at the time period until 1 January 2016, and concluded that the measure at stake amount to de minimis aid under the applicable de minimis Regulation. As such, the above described state measure is not considered to constitute state aid under the applicable EU law provisions.

EU/SA.40454: Tender for Additional Capacity in Brittany

by *Mira Todorovic Symeonides, (Athens)*

On 13 September 2017, the Decision in case SA.40454, issued on 15 May 2017 and published on Internet on 9 June 2017, was published in the EU Official Journal (JOCE L/235/2017). By this Decision the Commission conditionally approves aid to France in regard to the Compagnie Electrique de Bretagne for the construction of a gas-fired power plant in Landivisiau, Brittany. The Commission considered the measure both proportionate and necessary. In 2012, Compagnie Electrique de Bretagne (CEB), a consortium of Direct Energie and Siemens, won a tender to build a gas-fired power plant in Landivisiau. In order to provide for the security of supply in Brittany, the tender provided for a subsidy of €94,000 per megawatt per year with duration from 1 June 2018 to 31 May 2038 in return for a commitment from the plant operators to ensure electricity generation when required by the network operator. The Commission was concerned that the measure might harm competition if CEB sells its electricity to the national incumbent, thus the approval is subject to the condition that CEB will not sell the electricity from this plant through long-term contracts to any undertaking with a share of over 40% of the French electricity-generation capacity market. The Decision closes the investigation opened by the Commission on 13 November 2015 (Official Journal JOCE C/46/2016 published on 5 February 2016) regarding the support of the Landivisiau power plant in order to assess whether it is compatible with EU state aid rules for capacity mechanisms.



Greece/ SA.43879: Trans Adriatic pipeline (TAP)

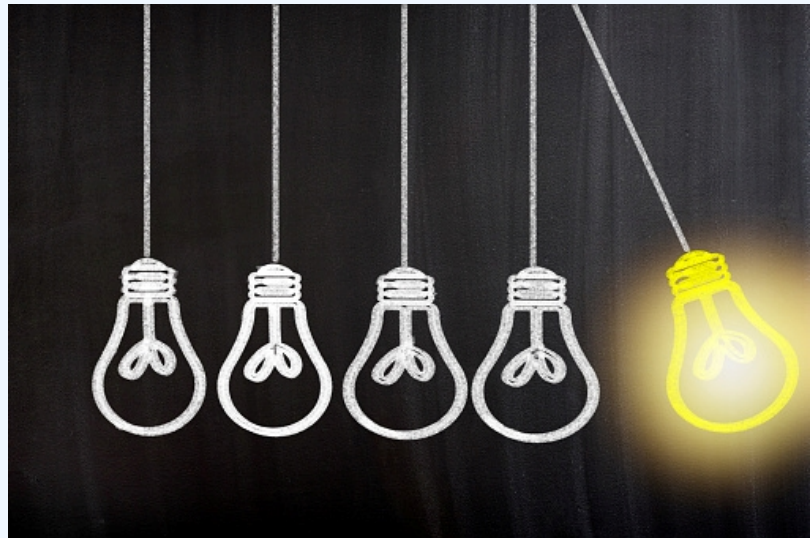
by *Evriddiki Evangelopoulou, (Thessaloniki)*

On 1 September 2017, the decision of European Commission regarding the authorisation for state aid pursuant to Articles 107 and 108 of Treaty on the functioning of the European Union was published in the Official Journal, while its public version was available since 13 July 2017. The decision's subject was the Host Government Agreement between the Greek authorities and the Trans Adriatic Pipeline to be in line with EU state aid rules. This sets out how TAP will construct and operate the pipeline and defines the respective obligations of the parties. Generally, the project is due to improve the security and diversity of EU energy supplies without unduly distorting competition in the Single Market.

EU/Greece SA.38101: Alleged State Aid to Aluminium S.A. following Arbitration Decision

by Mira Todorovic Symeonides, (Athens)

On 1 September 2017, the Commission published in the Official Journal JOCE C/291/2017 its Decision not to raise objection issued on 14 August 2017 and communicated to the Member State on 22 August 2017. In December 2013 the Commission received a complaint by a Greek state-owned electricity producer and supplier (the Complainant) concerning an alleged illegal State aid granted to Aluminium S.A. (Aluminium) on the basis of Decision 1/2013 of the Arbitration Tribunal (Arbitration Decision). This Arbitration Decision set the tariff to be applied by the complainant to Aluminium for the period 1 July 2010 until 31 December 2013. The complainant alleges that the Arbitration Decision obliges it to supply electricity to Aluminium below market prices (and even below its costs), thereby granting an advantage to Aluminium. The Arbitration Decision is imputable to the State and also involves State resources since it concerns the supply of electricity below a market price by a State-owned company. In addition the tariff set by the in the Arbitration Decision applies only to Aluminium, thereby granting a selective advantage to this company. The Commission first concludes that a prudent private market operator, faced with a similar situation as the one faced by the complainant, would have entered into an arbitration agreement similar to the present one, which established clear and objective parameters for setting a market tariff that arbitrators being expert in the field, should follow. Although the Commission concludes that it is unnecessary for it to control whether the awarded tariffs are below the market price or below the production costs, the Commission notes that the net tariff of 36.6 €/MWh that was finally determined by the Arbitration Decision is still higher than the average smelter power tariff in Europe, which in 2013 was reported to be 41 US\$/MWh, equivalent to 30.87 €/MWh at 2013 exchange rate and it concludes that no State aid was granted to Aluminium.



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EU/UK SA.44622: Modification of the Renewable Heat Incentive Scheme

by Aleksandar Mladenovic, (Belgrade)

On 18 August 2017, the European Commission published In the Official Journal JOCE C/274/2017 its decision concerning the assessment of compatibility of the Modification of UK Renewable Heat Incentive (RHI) Scheme for supporting investments in renewable heat technologies. The respective Modifications aim at promoting the generation of electricity from renewable sources and therefore fall within the scope of the currently applicable Guidelines on State aid for environmental protection and energy 2014-2020 (EEAG). The proposed measure has been found to meet the criteria of EEAG and its compatibility with the internal market (article 107(3)(c) TFEU has been confirmed.

EU/Poland: CJEU Ruling in Case C-329/15 on State Aid

by Tetyana Vyshnevskaya, (Kiev)

On 13 September 2017, the Court of Justice of the European Union (CJEU) issued a Judgment in Case C-329/15 initiated upon a request of the Supreme Court of Poland for a preliminary ruling concerning interpretation of Article 107(1) TFEU and Article 108(3) TFEU in regard to the proceedings between ENEA S.A. (a state owned electricity producer and supplier) and the Polish energy regulatory authority. The proceedings concerned the imposition of a financial penalty on ENEA for failing to fulfil its obligation to purchase electricity produced by cogeneration with the production of heat from energy sources connected to the network and situated in Poland (in order to make sure that at least 15% of its total electricity sales to end users are produced by cogeneration). In the appeal proceedings before the Supreme Court of Poland ENEA claimed that this obligation constituted new State aid, which was unlawful, as it had not been notified to the European Commission, thus, imposition of the financial penalty was unlawful as well. This claim led to the Supreme Court's request to the CJEU. According to the Judgment, having considered the submitted information and the Opinion of Advocate General of 22 March 2017, the CJEU came to a conclusion that Article 107(1) TFEU must be interpreted as meaning that a national measure, such as the one in question, placing an obligation on both private and public undertakings to purchase electricity produced by cogeneration with the production of heat does not constitute intervention by the State or through State resources. Therefore, such an obligation does not satisfy one of the four conditions for categorization as "State aid".

COMPETITION - STATE AID **highlight...**

EU: Court of Justice Rules on Spanish Law regarding Taxation of Energy products and Electricity

by *Stefania Chatzichristofi, (Athens)*

On 20 September 2017, the First Chamber of Court of Justice of the European Union (CJEU) issued its Decision on a request for preliminary ruling submitted by the High Court of Justice of Castilla-La Mancha, Spain (Tribunal Superior de Justicia de Castilla-La Mancha), in the context of an action brought to it by, on the one hand, Elecdey Carcelen SA, Energías Eólicas de Cuenca SA, Ibernova Promociones SAU and Iberdrola Renovables Castilla La Mancha SA, and, on the other hand, the Comunidad Autónoma de Castilla-La Mancha (Autonomous Community of Castilla-La-Mancha, Spain) concerning a levy imposed on wind power plants designed to produce electricity. The applicants that operate wind turbines designed to produce electricity in the territory of the Autonomous Community of Castile-La Mancha, having paid, in the tax year relating to the years 2011 and 2012, the levy established by the Law no. 9/2011, but taking the view that the said levy is unconstitutional and incompatible with EU law, requested from the competent authorities to rectify the self-assessments submitted to that end and to refund the amounts paid. Each of the applicants brought an action before High Court of Justice of Castilla-La Mancha, Spain (Tribunal Superior de Justicia de Castilla-La Mancha), as their applications were rejected.

First of all, the High Court of Justice of Castilla-La Mancha, Spain (Tribunal Superior de Justicia de Castilla-La Mancha), asked whether a levy, such as that provided for by Law 9/2011, is consistent with the objective pursued by Directive no. 2009/28 on the promotion of the use of energy from RES, since that Directive seeks to promote and to develop the consumption of RES, enabling Member States to make use of the support schemes set out in subparagraph (k) of the second subparagraph of Article 2 of that Directive. Further, the Court doubted as to whether that levy complies with Article 1(2) of Directive 2008/118 of 16 December 2008 concerning the general arrangements for excise duty,

since that tax does not have a specific purpose but is intended to generate additional budgetary revenue for the public authorities. Finally, that court wonders whether the levy at issue is compatible with Article 4(1) of Directive 2003/96 of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity, in that, by increasing the tax burden resulting from all the indirect taxes payable in Spain, the result may be a level of taxation in that Member State which exceeds the minimum level laid down in that provision and, therefore, leads to distortions of competition between MS. In those circumstances the Tribunal Superior de Justicia de Castilla-La Mancha (High Court of Justice of Castilla-La Mancha) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling. The request for a preliminary ruling seeks to ascertain whether that levy is compatible with the support schemes for RES under Directive 2009/28 or the rules on certain charges laid down therein. In addition, the national court asks about compatibility with Directive 2008/118 on excise duty and Directive 2003/96 on energy taxes.

Pursuant to the judgment of the CJEU, Directive no. 2009/28/EC must be interpreted as not precluding national legislation, such as that at issue in the cases in the main proceedings, which provides for the application of a levy on wind turbines designed to produce electricity. Further, article 4 of Directive 2003/96/EC must be interpreted as not precluding national legislation, such as that at hand, since that levy does not tax energy products or electricity, within the meaning of Article 1 and Article 2(1) and (2) of that Directive, and, therefore, does not fall within its scope. Finally, Article 1(2) of Directive 2008/118/EC must be interpreted as not precluding national legislation, such as that at issue, since that levy does not constitute a tax imposed on the consumption of energy products or electricity, and, therefore, does not fall within the scope of that Directive.

Renewables what's new...

Bulgaria: Decision on Certificates of Origin from High Efficiency CHPs

by *Veronika Yordanova, (Sofia)*

On 19 July 2017, an Ordinance № 7 on issuance, transfer and revocation of certificates of origin of electrical energy produced from high efficiency combined production of electricity and heat was issued by the Commission for Energy and Water Regulation (the Commission). The ordinance regulates the terms and procedure for issuance, transfer and cancellation of certificates of origin of the electric power energy from high efficiency combined heat and power (CHP) generation energy and recognition of the certificates of origin issued by the competent authorities in other Member States of the European Union. The Certificates of origin shall be issued by the Commission as electronic documents at the request of the manufacturer of the electricity produced by high-efficiency CHP plant, and used by the manufacturer to prove that the electrical energy was produced by such plant. The respective producers, regardless whether they are subject to licensing under the Energy Act or not, should submit to the Commission an application on an approved template for the issue of a certificate of origin within 14 days after the expiry of the period for which a certificate of origin is requested. The certificate is issued for a net quantity within a calendar month, with a high performance meters in compliance with the ordinance under Art. 162, para. 3 Energy Act, subject to the accuracy requirements, reliability and inability to counterfeit. The Commission shall establish and maintain an electronic registry of Certificates of Origin. The Register of Certificates of Origin is a database managed by information system, and contains data on manufacturers, issued, transferred, revoked and cancelled certificates of origin in accordance with the requirements of Art. 25, para. 1, item 2 of the Energy Act. The register will be s accessible through the Commission's website. The Register will show the status of the application for issuing of the certificate.

Romania: Regulation on the Green Certificates Market

by *Corina Badiceanu, (Bucharest)*



On 29 August 2017, the Order no. 77/2017 on the approval of the Regulation for the organisation and functioning of the green certificates market was published in the Official Gazette no. 697. The Regulation approved by the aforementioned Order regulates the organisation and functioning of the green certificates market, the involved parties and their responsibilities in the organisation and functioning of the green certificates market, the registration and administration of the information related to the transaction of green certificates as well as the information necessary for the monitoring of the functioning of green certificates market. The provisions of the Regulation apply to the participants to the green certificate market, the operator of the green certificates market (in his capacity of administrator of the green certificates market and of administrator of the green certificates Registry) as well as to the transport and system operator (in his capacity of issuer of green certificates). Starting with 1 September 2017, the previous Order of the President of the Romanian Energy Regulatory Authority (ANRE) no. 60/2015 on the approval of the Regulation for the organisation and functioning of the green certificates is no longer in force. The new Regulation was issued following the amendments brought at the end of March 2017 to the Law no. 220/2008 (Renewable Energy Law). The main amendments regulate the content of the Registry of green certificates, the

functioning of the green certificates market, and the functioning of the bilateral contracts market as well as the functioning of the spot centralized anonymous market for green certificates.

Serbia: Government Issued a Regulation on Guarantees of Origin

by *Vuk Stankovic, (Belgrade)*

On 7 September 2017, the Government of the Republic of Serbia adopted the Regulation no. 110-8381/2017 on guarantees of origin (Regulation), which provides that the guarantee of origin is issued for the electricity generated from renewable sources. The Regulation was published in the Official Gazette of the Republic of Serbia no. 82/2017 and came into force on 16 September 2017. Among other subjects, it regulates the following: (i) the content of the guarantee of origin; (ii) the procedure for issuing, transferring and terminating the validity of the guarantee of origin; (iii) the manner of keeping the registry records; (iv) the manner of delivery of data on the generated electricity, measured at the point of delivery to the transmission system, distribution system and closed distribution system; (v) supervision procedure. It should be noted that Article 23 of the Regulation prescribes that the transmission system operator is obliged to issue the rules on the issuance of guarantees of origin within 12 months from the date of entry into force of the Regulation, i.e. until 16 September 2018. As of 16 September 2017, the Regulation fully replaced Rulebook on guarantee of origin of electricity generated from renewable sources (Official Gazette of the Republic of Serbia no. 24/2014).

RENEWABLES highlight...

Ukraine: Different Amendments Concerning RES Developers

by Tetyana Vyshnevska, (Kiev)

On 14 September 2017, the National Energy and Utilities Regulatory Commission (NEURC) issued Resolution No. 1118 on Approval of Amendments to the Model Power Purchase Agreement (PPA) between the State Enterprise Energorynok and a Business Entity Producing Electricity Using Alternative Energy Sources. The main objective of the amendments (drafted in close cooperation with the EBRD, IFC and OPIC) is to bring current Model PPA, approved by the NEURC Resolution No. 1314 of 11 October 2012, in line with the current legislation and to facilitate investments in the renewable energy sector, including through protection of interests of potential investors and creditors. Among other, the key changes include: a) a fixed duration of the PPA equal to the duration of the granted feed-in tariff (i.e. until 1 January 2030); b) a clear, supplemented definition of force majeure and c) a possibility to execute pre-PPAs, to re-assign the rights to claim and to resolve disputes with the help of the Energy Community Dispute Resolution and Negotiation Centre and by means of international arbitration. The Resolution will come into force on the day following the day of its official publication.

Noteworthy, on 29 August 2017, NEURC abolished its controversial Resolution No. 148 of 31 January 2017 on

Setting the Value of the Cost Per Unit for Non-Standard Grid Connection of Electrical Installations for 2017, which would have increased the rates of non-standard grid connection of electrical installations with the installed capacity ranging between 160 kW and 5 MW, including facilities generating electricity from renewable energy sources (RES). According to the explanatory note, the Resolution has been abolished due to adoption of the Electricity Market Law (No. 2019-VIII of 13 April 2017) and due to the fact that as of 13 June 2017 the Resolution hasn't come into force.

Moreover, the electricity Transmission System Operator (TSO) NPC Ukrenergo has published on its website for consultation the draft requirements for wind power plants (WPPs) and solar power plants (SPPs) in case of their connection for parallel operation with the Unified Energy System of Ukraine (UESU). The main objective of the document is to ensure secure operation of the UESU by standardizing the minimum technical and performance requirements for WPPs and photovoltaic SPPs with the installed capacity exceeding 150kW, which use static electronic energy converters and are connected to general-purpose electricity grids. Interested stakeholders may provide their feedback until 30 September 2017.



Energy Efficiency **what's new...**




Bulgaria: Public Consultation on Draft Update of the Energy Efficiency Plan

by Apostolos Christakoudis, (Sofia)

On 7 September 2017, Bulgarian Energy Ministry launched a public consultation regarding the draft updated National Energy Efficiency Action Plan 2014-2020. According to the requirements of Directive 2012/27 / EU, the plan is prepared and presented to the European Commission in 2014 and should be updated by Bulgaria after three years. By 2020, primary energy consumption in Bulgaria should be reduced from 18.46 million tons of oil equivalent (as without energy efficiency measures) to 16.87 million tons of oil equivalent. The document provides that the implementation of the national targets will lead to a reduction of the primary energy intensity of the country by 41% in 2020 compared to 2005. The measures for achieving of energy savings are funded by different sources, including the Operational Programs, Programme "B04" for Energy Efficiency and Renewable Energy Program, funded by the European Economic Area Financial Mechanism, the Energy Efficiency and Renewable Energy Fund, the National Energy Program efficiency of multi-family residential buildings and others.



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