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The new normative support regime for RES/CHP stations - Attempt to attract investments in the Greek energy market

I. Preliminary remarks

In early August 2016, the Parliament passed the Law No. 4414 on the "New support scheme for electricity producers of Renewable Energy Sources (RES) and Combined Heat and Power High Performance (CHP) stations - Provisions for legal and functional separation of supply and distribution industries in the market of natural gas and other provisions "(Gov. A'139 / 09.08.2016), which, inter alia, regulates highly important issues for the Greek energy market as regards the electricity stations generating power from RES and CHP.

The new regime falls within the broader ambit of the EU common policy towards tackling climate change and in particular towards achieving the target of 20% shares of RES in the growth domestic energy consumption of the energy mix. In the context of achieving national and EU targets, the new scheme adopts the requirements of section 3.3 of the EU "Guidelines for State aid in the field of environment and energy for 2014-2020" with an aim to expand and support further investment of RES in Greece.

Aiming to improve the viability of RES development and investment, this scheme seeks to resolve the issue of the guaranteed price and the consequently long delays in payments.

II. Changes in the electricity sales process from RES

The new law seeks to establish a framework for a smooth transition from the old system of fixed retail prices (feed-in-tariffs) to the new system of differential increments and tendering (feed-in-premium).

The new regime is based on the development of a new support mechanism for the operation of RES (operating aid), which provides a premium in addition to the price shaped in the wholesale electricity market. This increase will be granted for the validity support period of RES and CHP of each power station and will take the form of a differential value (FiP), taking into consideration the revenue resulting from participation in the electricity market.

The incremental increase was adopted on a station category level (sliding premium) and not a steady increase (fixed premium), so that the financial assistance mechanism is not affected by variations of the future price in the wholesale market. This attempts to ensure control and a predetermined size of the total income received by certain stations from RES and CHP, targeted to minimize both eventual phenomena of overcompensation and undercompensation of electricity produced from RES and CHP.

More specifically, the power stations from RES and CHP put into operation in the Interconnected System from 1.1.2016 are included in the support scheme in the form of operating aid and on the basis of a Price Differential Compensation (Differential Increment) for the electricity they produce. The differential premium is calculated on a monthly basis, whereas the validation, billing and settlement of transactions involving the differential increase processes will be determined by decision of the Minister of Environment and Energy, which is expected to be issued within three months from the entry into force of this Act.

III. Reforms in the RES Special Account

Of fundamental value is also the legislative intervention to correct the major lingering structural dysfunction of financing of the RES support mechanism, as articulated in article 23 of the said Law. This new article finally solves the ongoing deficit problem of the RES Special Account, by providing a new revenue source, that of the Electricity Suppliers (or charge representatives), which reflects the costs they used to avoid due to the presence and penetration of RES in the electricity market.

The provisions of the new law aim at creating a favorable environment for further future investments on RES/CHP stations. It remains to be seen if this objective will be achieved given that retroactive measures adopted in the past have severely undermined the overall credibility of the support and financing mechanism for RES.

2

The Danish Energy Agency introduces energy calculating model

The Danish Energy Agency has announced plans to introduce a new model which can be used in the country's international co-operative efforts regarding energy and climate.

The model, which has been designed to aid in the exploitation of economic advantages relating to the energy sector whilst also taking climate change into account, will enable the comparison of potential costs when energy consumption is reduced and when the supply of energy is extended

This is important in the context of future energy and climate discussions as, in the developing world in particular the extension of the energy supply is seen as integral to supporting growth and enhancing living conditions. To ensure that the development of the energy sector in these countries is achieved in a sustainable way – and, moreover, to ensure that international climate commitments are met – many are looking to Denmark for ideas on best practice.

This is perhaps due to the fact that the Danes have been able to consistently increase their economic growth whilst simultaneously reducing both energy consumption and the nation's impact on the climate impact. One important element in the Danish approach has been the priority placed on energy efficiency across multiple sectors.

The Danish Energy Agency presented its 'levelized cost of energy' model (LCoE Calculator) at COP21, which, it said, can be used to help estimate individual countries' economic development, as well as the potential impact that green solutions – as compared to conventional solutions – may have both with regard to the economy and any environmental impacts.

The Danish Energy Agency is now expanding this tool in order to be able to make price comparisons with regard to the extension of a given energy supply with the price of reducing energy consumption via investments in energy efficiency.

The objective here is to provide decision-makers in Denmark's partner countries with a broader picture of their economies and, additionally, to render visible the possibilities generated by both a more sustainable development of their energy sector and of enhanced energy efficiency.

3

Germany warns of EU energy targets failure

Germany has warned that EU member states could fail to meet new energy efficiency targets for 2030 if they are not made mandatory.

The German government has said that maintaining non-binding goals beyond 2020 guarantees member states will have the flexibility to adjust their energy efficiency policy to national circumstances. Berlin said: "[This approach] entails the risk of failure to meet targets and can lead to friction between member states and the EU Commission. The German government acknowledged that binding targets and mechanisms for 2030 would also require greater political effort to negotiate, which could result in delays.

The country outlined its concerns in a discussion paper, produced by its economy and energy ministry, which was assessing Germany's progress as it moves towards its own national goal to cut energy consumption by half by 2050 compared with 2008 use. The discussion paper noted Germany's recent achievements in energy efficiency – with primary consumption dropping by 8.7% between 2008 and 2014 – but added that progress would be needed to accelerate the country to meet its own 50% savings goal for 2050.

According to the German government, a move to prioritise energy efficiency in all sectors combined with a demand-led approach within the energy system – called the 'energy efficiency first' principle – could help speed up the transition.

Commenting on the document, Stefan Scheuer, Secretary General of the industry group Coalition for Energy, said: "The principle of putting energy efficiency first is gaining ground in member states, and expectations are increasing for the commission to take the lead."

The European Commission will officially publish its energy proposals in December 2016.

4

Commission opens in-depth investigation into Luxembourg's tax treatment of GDF Suez (now Engie)

The European Commission has opened an in-depth investigation into Luxembourg's tax treatment of the GDF Suez group (now Engie). The Commission has concerns that several tax rulings issued by Luxembourg may have given GDF Suez an unfair advantage over other companies, in breach of EU state aid rules.

The Commission will assess in particular whether Luxembourg tax authorities selectively derogated from provisions of national tax law in tax rulings issued to GDF Suez. They appear to treat the same financial transaction between companies of GDF Suez in an inconsistent way, both as debt and as equity. The Commission considers at this stage that the treatment endorsed in the tax rulings resulted in tax benefits in favour of GDF Suez, which are not available to other companies subject to the same national taxation rules in Luxembourg.

Margrethe Vestager, Commissioner in charge of competition policy, said: "*Financial transactions can be taxed differently depending on the type of transaction, equity or debt - but a single company cannot have the best of two worlds for one and the same transaction. Therefore, we will look carefully at tax rulings issued by Luxembourg to GDF Suez. They seem to contradict national taxation rules and allow GDF Suez to pay less tax than other companies.*"

From September 2008, Luxembourg issued several tax rulings concerning the tax treatment of two similar financial transactions between four companies of the GDF Suez group, all based in Luxembourg. These financial transactions are loans that can be converted into equity and bear zero interest for the lender. One convertible loan was granted in 2009 by LNG Luxembourg (lender) to GDF Suez LNG Supply (borrower); the other in 2011 by Electrabel Invest Luxembourg (lender) to GDF Suez Treasury Management (borrower).

The Commission considers at this stage that in the tax rulings the two financial transactions are treated both as debt and as equity. This is an inconsistent tax treatment of the same transaction. On the one hand, the borrowers can make provisions for interest payments to the lenders (transactions treated as loan). On the other hand, the lenders' income is considered to be equity remuneration similar to a dividend from the borrowers (transactions treated as equity).

The tax treatment appears to give rise to double non-taxation for both lenders and borrowers on profits arising in Luxembourg. This is because the borrowers can significantly reduce their taxable profits in Luxembourg by deducting the (provisioned) interest payments of the transaction as expenses. At the same time, the lenders avoid paying any tax on the profits the transactions generate for them, because Luxembourg tax rules exempt income from equity investments from taxation.

The final result seems to be that a significant proportion of the profits recorded by GDF Suez in Luxembourg through the two arrangements are not taxed at all.

5

Commission's top scientific advisers publish opinion on how to better measure car CO_2 emissions.

Today, the High-Level Group of the Commission's Scientific Advice Mechanism (SAM) has published its first opinion, which focuses on enhancing the measurement of CO_2 emissions from cars. Carlos Moedas, Commissioner for Research, Science and Innovation, said: *"We set up the Group of High-level Scientific Advisers only last year to support policy making with high-quality, independent scientific advice, in line with the Better Regulation Agenda to improve the quality of EU legislation. This is exactly what they have done with this first report. We need to reduce CO_2 emissions of cars and vans if we are to achieve climate and sustainability goals, and now we have additional scientific evidence base to mould future climate policies in this area."* Miguel Arias Cañete, Commissioner for Climate Action and Energy, said: *"Curbing CO_2emissions and more representative measurements will support European and global efforts to decarbonise transport in view of international commitments to combat climate change. An important step has been the adoption of a new emissions testing procedure. This first opinion of the SAM High-level Group will undoubtedly constitute a key reference for our work on post-2020 emission performance standards for cars and vans in the EU."* The independent group of eminent scientists welcomes the introduction of the new emissions testing procedure as from 2017 that is expected to provide more representative CO_2 emission measurements. They recommend a regular review of this procedure, complemented by a framework for the monitoring of real driving CO_2 emissions including a formal reporting of the fuel consumption of passenger cars.

6

EU-Ukraine Summit: EU and Ukraine intensify energy partnership

On 24 November 2016, the European Commission Vice-President for Energy Union Maroš Šefčovič and the Energy Minister of Ukraine, Ihor Nasalyk, signed a new Memorandum of Understanding on a Strategic Energy Partnership between the EU and Ukraine. The Memorandum of Understanding aims to invigorate energy cooperation between the EU and Ukraine.

The new agreement will broaden the cooperation in all areas, including energy efficiency and renewable energy, as well as aim to create more certainty for investors. Up until now cooperation focused mainly on energy security, nuclear safety, infrastructure and market reforms.

Vice-President Šefčovič said: "Ukraine has been a long-standing strategic energy partner for the EU. It has been a reliable transit country for transporting Russian gas to EU countries even during recent turbulent times. We want to maintain Ukraine as an important transit country also for the future. Ukraine fully supports the Energy Union and wants to be a strategic partner in its implementation. It is now time to expand our energy cooperation and attract more investment in all other areas of energy, including renewables and energy efficiency."

European Commissioner for Energy and Climate Action Miguel Arias Cañete said: "The signature of today's Memorandum of Understanding is recognition of the significant reforms Ukraine has undertaken in the gas sector over the past two years. For Ukrainian citizens to reap the full benefits of a reformed energy sector, it is clear that the reforms will have to continue and be extended to all other areas of the energy sector. The EU will offer its full support in this process. Ukraine is our biggest partner within the Energy Community and it is crucial that we coordinate our policies and share the same rules for the energy market, including on environmental and climate objectives. In this regard I welcome Ukraine's ratification of the Paris agreement."

The Memorandum of Understanding replaces the Memorandum which was signed back in 2005 between the EU and Ukraine on cooperation in the field of energy. The Memorandum of Understanding foresees enhanced cooperation on a number of energy topics, from energy security to full market integration, energy efficiency and the decarbonisation of the economy to research and cooperation. The Memorandum of Understanding covers an initial period of 10 years and will be implemented through annual priority work plans.

*The Hellenic Regulation Institute is a scientific multidisciplinary forum founded by Metaxas & Associates Law Firm (**www.metaxaslaw.gr**) in an effort to host a well-founded dialogue between energy experts and people interested in the energy field.*

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