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1. "Energy Dialogues" to open with electricity market event

The Hellenic Energy Regulation Institute, or HERI (www.energy-regulation.eu) and Energy Press have joined forces for a significant initiative aiming at enriching and deepening domestic public discussion on current matters concerning and influencing all aspects of the Greek energy market.

To be staged as a series of regular thematic events, the initiative, titled "Energy Dialogues", will serve as a platform for public dialogue, as well as scientific, academic and technocratic exchange on prevailing Greek energy-sector issues.

As part of the event's proceedings, energy sector specialists will offer detailed positions on pre-determined questions as a means of shedding light on fundamental issues, including ones of scientific and academic interest.

The speeches to be offered by participating academics and energy-sector officials will be documented and published for the creation of an archive of thought-provoking material. In order to provide access of information to sector professionals, citizens, researchers, as well as the ever-increasing number of young scientists, the archive will be also made available through a special section to be launched on the Energy Press news portal.

The event, based on similar initiatives staged by reputable foreign sector-related research institutes such as the Florence School of Regulation, and Germany's Institute for Energy and Regulation, will aim to contribute to research and the accumulation of scientific data that will help solve energy regulation matters, while also providing guidance, based on international models, towards more creative and richer Greek public discussion, which, far too often, remains shallow and unproductive.

"Energy Dialogues" will be curated and coordinated by the President of the Hellenic Energy Regulation Institute, Dr. Antonis Metaxas, Lecturer at the University of Athens and Visiting Professor of Energy Law at the International Hellenic University.

The event will be held in close association with Greece's academic community, which has already begun offering specialized interdisciplinary post-graduate programs with a focus on energy regulation.

The inaugural "Energy Dialogues" event, scheduled to take place on October 31, 2014, at Aegli, Zappeio Gardens, Athens, as part of a multi-conference titled "Capital & Vision", will focus on the local electricity market's restructuring with emphasis on three fields – the reshaping of Greece's wholesale market and its compatibility with the European Target Model; NOME-type auctions; and reorganization of the capacity assurance mechanism.

2. CEU finds that the exclusive rights to lignite granted to PPC violate EU law

On July 17 2014, the Court of Justice of the European Union (CEU) issued its decision (C-553/12) by which it set aside the judgment of the General Court in Case *DEI v Commission*, by which the latter had annulled the Commission's decision on the granting or maintaining in force by the Hellenic Republic of rights in favor of DEI for the extraction of lignite.

By its decision, the Commission had found, inter alia, that the grant and maintenance of the exclusive license to DEI to explore and exploit lignite in Greece was contrary to Article 106(1) TFEU, read together with Article 102 TFEU, since it created a situation of inequality of opportunity between economic operators as regards access to primary fuels for the purposes of generating electricity and allowed DEI to maintain or reinforce its dominant position on the Greek wholesale electricity market by excluding or hindering any new entrants.

With its judgment, the General Court had annulled the Commission's decision by pointing out that the Commission «*had not established that privileged access to lignite was capable of creating a situation in which, by the mere exercise of its exploitation rights, [DEI] could have been able to commit abuses of a dominant position on the wholesale electricity market or was led to commit such abuses on that market*».

«*By finding simply that [DEI], a former monopolistic undertaking, continues to maintain a dominant position on the wholesale electricity market by virtue of the advantage conferred upon it by privileged access to lignite, the Commission has neither identified nor* *established to a sufficient legal standard to what abuse, within the meaning of Article 102 TFEU, the State measure in question has led or could lead DEI».*

However, the Commission brought an action for the annulment of the judgment of the General Court relying principally on the false interpretation and application of Article 106 TFEU by the latter court while arguing that it had erred in holding that the Commission was required to identify and establish the conduct constituting abuse of dominant position to which the State measure in question had led, or could have led, DEI.

Indeed, the CEU sided with the Commission's pleas and reiterated its settled case law by noting that, pursuant to Article 106(1) TFEU, a Member State is in breach of the prohibitions laid down therein in conjunction with Article 102 TFEU, if it adopts any law that creates a situation in which a public undertaking or an undertaking on which it has conferred special or exclusive rights, merely by exercising the preferential rights conferred upon it, is led to abuse its dominant position or when those rights are liable to create a situation in which that undertaking is led to commit such abuses.

The outstanding point of the CEU judgment lies in its finding that it is not necessary that any abuse should actually occur in order for Article 106 in conjunction with Article 102 TFEU to be applicable. This of course was not a novelty in relation to relevant settled case law of the CEU, but it seems that the General Court had taken another view.

The CEU set aside the judgment of the General Court and referred the case back to it so as to adjudicate on the pleas raised before it on which the General Court had not ruled.

<u>3. Commission authorizes UK Capacity Market electricity generation scheme</u>

The European Commission has concluded that the proposed UK Capacity Market is in line with EU state aid rules. The scheme aims to ensure that sufficient electricity supply is available to cover consumption at peak times. The Commission found in particular that the scheme will contribute to ensuring the security of energy supply in the United Kingdom (UK), in line with EU objectives, without distorting competition in the Single Market. This is the first time that the Commission has assessed a capacity market under the new provisions on capacity markets in the new Environmental and Energy State Aid Guidelines (see IP/14/400).

Under the Capacity Market, the Great Britain System Operator will organize annual centrally-managed auctions to procure the level of capacity required to ensure generation adequacy. Auctions will be open to existing and new generators, demand side response (DSR) operators and storage operators. The UK has also committed to opening the participation to new interconnectors as of 2015.

The measure will be financed through a levy on electricity suppliers.

The Commission assessed the measure under its new state aid Guidelines on Energy and Environmental Protection (see IP/14/400). As required by the Guidelines, the UK has only introduced the Capacity Market following a thorough investigation of its necessity and the potential for alternative measures to contribute to ensuring the security of supply objective. The use of auctions should ensure aid granted is limited to the minimum necessary.

The Capacity Market is part of the comprehensive UK Electricity Market Reform that also includes other support measures, such as the UK compensation to energy intensive users for indirect costs of carbon price floor (see IP/14/577), the Contract for Difference (CfD) scheme (see IP/14/866) and the planned support for the construction and operation of a new nuclear power plant at Hinkley Point in Somerset (see IP/13/1277). The Commission's in-depth investigation in relation to the latter is ongoing.

4. Commission approves German renewable energy law EEG 2014

The European Commission has found the new German Renewable Energy Act (EEG 2014) to be in line with EU state aid rules. The EEG 2014 provides support for the production of electricity from renewable energy sources and from mining gas. It also reduces the financial burden on energy-intensive users and certain auto-generators by reducing their level of payment of the EEG-surcharge. Finally, the EEG 2014 provides that the aid will be progressively allocated through tenders which will gradually be opened to operators located in other Member States. The Commission has concluded that the EEG 2014 will further EU environmental and energy objectives without unduly distorting competition in the Single Market.

In April 2014 Germany notified a draft law for supporting renewable energies. The Commission's assessed its compatibility under the provisions of its new Energy and Environmental Aid Guidelines adopted in April 2014 (the Guidelines, see IP/14/400 and MEMO/14/276). The EEG 2014 entered into force on 1 August 2014. The yearly budget for the support of renewable electricity is estimated at around € 20 billion.

Producers of renewable electricity will be obliged to sell on the market. They will obtain support in the form of market premiums paid on top of the market price for electricity. Until 31 December 2016 the market premiums will be determined by reference to administratively set reference values. In the case of solar installations on the ground, a pilot tender will be organized. It will determine the level of the premiums and allocation of the aid between participants to the tender. As of 2017, tenders should be generalised but a new law is required to introduce them. The support to renewable electricity is therefore approved until 31 December 2016.

Small installations (below 100 kW) will continue to benefit from feed-in tariffs and are not obliged to sell on the market. This part of the scheme was approved for 10 years.

The support system under the EEG 2014 is financed from the EEG-surcharge that is to be paid by suppliers in respect of the electricity supplied to end consumers in

Germany and by auto-generators (i.e. electricity producers for self-consumption). Reductions are provided for energy-intensive users in sectors which are eligible for such reductions under the Guidelines. These reductions are allowed by the Guidelines on competitiveness grounds, since these sectors are both electro-intensive and exposed to international trade.

Reductions are also granted under the EEG 2014 to certain auto-generators. Reductions for auto-generators using small installations are allowed as they are below the de minimis threshold. Reductions for auto-generators using renewable energy sources are also allowed since they are in line with the logic of the EEG-surcharge system. Reductions for auto-generators which are energy-intensive are also allowed under the Guidelines. For other types of installations, the reductions will need to be reviewed and eventually adapted to the requirements of the Guidelines. Germany has committed to review them in due time and re-notify amendments to the Commission by 2017. On that basis the Commission

could also conclude that the exemptions and reductions granted under the EEG 2014 to auto-generators were in line with the Guidelines. The yearly budget of the reductions is estimated at around EUR 5 billion.

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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