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Hellenic Energy Regulation Institute

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Paris Agreement signing ceremony in New York: the EU calls for swift ratification

The European Union signed the Paris Agreement on climate change on 22 April 2016 in New York. The signing ceremony, convened by UN Secretary-General Ban Ki-moon, followed the adoption of the world's first universal climate change agreement by 195 countries in Paris on 12 December 2015. The EU was the first major economy to table its commitment in the run up to the Paris climate conference (COP21) and now looks forward to the swift ratification and entry into force of the Agreement.

On behalf of President Jean-Claude Juncker, the Vice-President of the Commission responsible for the Energy Union, Maroš Šefčovič, and the Climate Action and Energy Commissioner Miguel Arias Cañete attended the high-level ceremony. Vice-President Šefčovič and Dutch Environment Minister Sharon Dijksma signed the agreement on behalf of the EU and Commissioner Arias Cañete delivered the official statement.

Vice-President Šefčovič said in Brussels: *"Our signature means first and foremost that we are signing up to the commitments we made in Paris. It sends also a clear signal that we are signing up to a fundamental and ground-breaking transition to a low-carbon economy and society. This transition is now irreversible and unstoppable. At the global level, we are seeing the winds of change. Europe is part of this and will continue to be a driving force. That's why we need to deliver the Energy Union and create the conditions for future opportunities, innovation and job-creation that this transition will bring. Let's use the momentum."*

Commissioner Arias Cañete said: *"We have agreed. We will sign, and we will act. In Europe, we have already started our homework of implementing the Paris Agreement and we will continue to lead the global low-carbon economy transition. We will ratify the Paris Agreement by securing the support of our 29 parliaments, and by demonstrating that we will have the policies in place to meet our commitments. This will ensure that when we act, we will act on a solid legal basis. Before the start of this summer, the European Commission will present a proposal to the Council to ratify the Paris Agreement on behalf of the European Union."*

For more information on the Paris Agreement, please click ***here***.

2

Commission approves agreement between Greece and TAP allowing new gas pipeline to enter Europe

The European Commission has found the Host Government Agreement between the Greek authorities and the Trans Adriatic Pipeline to be in line with EU state aid rules. The project will improve the security and diversity of EU energy supplies without unduly distorting competition in the Single Market.

According to Margrethe Vestager, Commissioner in charge of competition policy, the decision *"opens the way for a multi-billion infrastructure project in Greece. The Trans Adriatic Pipeline will bring new gas to the EU and increase the security of energy supply for Southeast Europe. The investment incentives offered by the Greek Government are limited to what is necessary to make the project happen and in compliance with state aid rules."*

The Trans Adriatic Pipeline is the European leg of the Southern Gas Corridor, which aims to connect the EU market to new gas sources. With an initial capacity of 10 billion cubic metres of gas per year, the pipeline will transport gas from the Shah Deniz II field in Azerbaijan to the EU market as of 2020. The Trans Adriatic Pipeline will run from the Greek border via Albania to Italy, under the Adriatic Sea. The builder and operator of the pipeline is Trans Adriatic Pipeline AG (TAP), a joint venture of several energy companies. TAP will invest €5.6 billion over five years in the project, of which €2.3 billion in Greece.

The Host Government Agreement sets out how TAP will construct and operate the pipeline and defines the respective obligations of the parties. In particular, the agreement provides TAP with a specific tax regime for 25 years from the start of commercial operations. This may give the company an economic advantage over its competitors, who would not benefit from the specific tax regime, and therefore involves EU state aid rules.

The Commission assessed the measure under its 2014 Guidelines on state aid for energy and environmental protection. The Guidelines state that such aid can be found compatible under certain conditions when it furthers objectives of common interest. The Commission concluded that the project's benefits in terms of increased competition and security of energy supply clearly outweigh any potential distortions of competition triggered by the state aid.

3

Commission publishes interim report on electricity capacity mechanisms

In April 2015, the Commission launched a state aid sector inquiry into national measures aimed at ensuring that adequate capacity to produce electricity is available at all times (so-called "capacity mechanisms"). The purpose of the inquiry is to gather information on capacity mechanisms to examine, in particular, whether they ensure sufficient electricity supply without distorting competition or trade in the EU Single Market. The inquiry complements the Commission's Energy

Union Strategy to create a connected, integrated and secure energy market in Europe.

Over the past year, the Commission has collected a large amount of information from over 120 market participants and public bodies on past, existing and planned capacity mechanisms in 11 Member States - Belgium, Croatia, Denmark, France, Germany, Ireland, Italy, Poland, Portugal, Spain and Sweden. The Commission found 28 capacity mechanisms which can be categorized in six different types. The most common type is a strategic reserve, by which the State pays specific power plants to become operational in case of need. Recent initiatives by Member States suggest there is a general trend towards more open and inclusive mechanisms, which are in principle open to participation from all categories of capacity providers. This is a positive development: to create a true Energy Union and ensure costs for consumers and companies are kept to a minimum, capacity mechanisms should be open to all types of providers, domestic or foreign, regardless of technology.

However, the Commission's interim report also points to a lack of proper and consistent analysis by many Member States of the actual need for capacity mechanisms. It also appears that some of the capacity mechanisms that are currently in place could be better targeted and more cost-effective. These findings do not prejudge the Commission's assessment of the compatibility with EU state aid rules of any individual capacity mechanism, which requires a case-by-case analysis.

The Commission has invited Member States, stakeholders in the electricity sector and others to submit comments on the interim report and the annexed staff working document by 6 July 2016. In the light of comments received, the Commission will publish a final report on the results of the sector inquiry later this year. In the meantime, the Commission continues to assess capacity mechanisms under EU State aid rules, and in particular the 2014 Guidelines on state aid for environmental protection and energy. The sector inquiry also contributes to the Commission's Energy Union objectives. In particular, the results of the inquiry will feed into legislative proposals on a revised electricity market design due to be presented later this year.

For the full text of the interim report, please click ***here***.

4

Commission authorizes support for renewable energy in Italy

The European Commission has concluded that an Italian scheme aimed at supporting electricity generation from renewable energy sources is in line with EU state aid rules. The scheme will further EU energy and climate goals without unduly distorting competition in the Single Market.

In particular, the scheme will support Italy in reaching its EU renewable energy targets by helping to deploy around 1300 megawatts (MW) of additional renewable generation capacity.

The Commission assessed the scheme under its 2014 Guidelines on State Aid for Environmental Protection and Energy. Under these rules Member States can grant state aid for renewable energy, subject to certain conditions, aimed at ensuring that Europe meets its ambitious energy and climate targets at the least possible cost for taxpayers and without undue distortions of competition in the Single Market.

The scheme will last until the end of 2016. All renewable energy technologies can benefit from the scheme, except solar power. According to Italy, solar power is already competitive on the Italian market without the need for direct support to the electricity produced, as confirmed by the significant generation capacity deployed in recent years without such support.

The type of support renewable energy projects can receive under the scheme depends on their size:

• large projects with more than 5 MW of installed power will compete in tenders specific for each technology;

• medium size projects with installed power between 0.5 MW and 5 MW enter a list specific for each technology, and will be prioritized subject to set criteria in order to receive support;

• projects smaller than 0.5 MW will have direct access to aid upon request.

The Commission found that the scheme promotes the integration of renewable energy producers into the market, in line with the Guidelines. Only small installations can benefit from feed-in tariffs, whilst larger installations will receive support through a premium, i.e. a top-up on the market price, which exposes these renewable energy sources to market signals. The scheme will also support the refurbishing of existing generators of any size, for example to increase their efficiency or extend their operational lifetime.

The Commission was therefore able to conclude that the scheme will increase the proportion of electricity generated from renewable sources and reduce pollution, in line with EU Energy Union goals, without unduly distorting competition.

5

General Court confirms that the German law on renewable energy of 2012 involved State aid

In the relevant dispute, Germany contested the Commission's finding that the German law on renewable energy of 2012 (the EEG 2012) involved State aid, even though the Commission, ultimately, largely approved the aid.

The EEG 2012 laid down a scheme to support undertakings producing electricity from renewable energy sources and mine gas ('EEG electricity'). That law thus guaranteed those producers a price higher than the market price. In order to finance that support measure, it imposed an 'EEG surcharge' on the suppliers to the final customers, which in practice was passed on to the final customers. However, certain undertakings, such as electricity-intensive undertakings in the manufacturing sector ('EIUs'), were eligible for a cap on that (passed on) surcharge in order to maintain their international competitiveness. The EEG surcharge was payable to the interregional operators of high and very-high-voltage transmission systems (TSOs), which were obliged to sell the EEG electricity.

In its decision of 25 November 2014, the Commission found that, although the support laid down by the EEG 2012 for undertakings producing electricity from renewable energy sources constituted State aid, that aid was, however, compatible with EU law. It also classified the reduction in the EEG surcharge for electricity-intensive undertakings as State aid. Since it took the view that those reductions were for the most part compatible with EU law, it ordered recovery in respect of a limited part of the reductions only.

In its judgment of 10 May 2016, the General Court rejected all the arguments by which Germany sought annulment of the Commission's finding that the EEG 2012 involved State aid. It accordingly dismissed the action in its entirety.

According to the Court, the Commission was correct in taking the view that the reduction in the EEG surcharge for electricity-intensive undertakings conferred upon them an advantage within the meaning of EU law on State aid. That reduction released them from a charge which they would normally have had to bear. The grounds underlying an aid measure do not suffice to exclude the measure at the outset from classification as aid.

Furthermore, the Commission was correct in taking the view that the EEG 2012 involved State resources. The mechanisms under the EEG 2012 result, principally, from implementation of a public policy, laid down by the State through the EEG 2012, to support producers of EEG electricity. First, the funds generated by the EEG surcharge and administered collectively by the TSOs remain under the dominant influence of the public authorities; second, the amounts in question, generated by the EEG surcharge, are funds which involve a State resource and can be assimilated to a levy; and, third and last, it may be concluded from the powers and tasks given to the TSOs that they do not act freely and on their own behalf, but as administrators (assimilated to an entity executing a State concession) of aid granted through State funds.

In this connection, the Court pointed out that the EEG 2012 is substantially different from the mechanism established by the previous German law, which was the subject matter of the judgment of the

Court of Justice in PreussenElektra – a judgment in which the Court ruled out the existence of State aid. The funds at issue in that case could not be considered to be a State resource since they were not at any time under public control and there was no mechanism (such as that at issue in the present case), established and regulated by the State, for offsetting the additional costs arising from the obligation to purchase and through which the State offered the private operator concerned the certain prospect that the additional costs would be covered in full.

6

IEA publishes report on European electricity market design

The International Energy Agency (IEA) has published a report on European electricity market design. The report, entitled 'Key recommendations for European electricity market design', contains best practices on ways a new market design can fit the changes taking place in the electricity sector.

It details the best ways to 're-power' electricity markets – the process of replacing older market frameworks with ones that suit decarbonisation and ensure a secure electricity supply.

Speaking in Brussels at the report's launch on 18 February, Miguel Arias Cañete, Commissioner for Climate Action and Energy, said: "our challenge ahead is to make Europe number one in renewables. We must prepare for an energy system in which more than half of electricity consumption is powered by renewables."

For this, short term market frameworks need to be fit for purpose, market signals have to be precise and quick, providing the full benefits of cross-border integration and maximizing the use of energy from variable sources.

The report finds that electricity market designs have become increasingly complex with the introduction of competitive markets in most Organisation for Economic Cooperation and Development (OECD) countries.

For the full text of the report, please click ***here***.

7

Commission proposes new rules on gas and a heating and cooling strategy

The European Commission has released new proposals for a raft of measures which will shore-up prevention of gas crises and ensure better coordination and support between EU countries in any gas supply disruption. The proposals will also tighten-up so-called intergovernmental agreements in the energy field between EU and non-EU countries and set out a strategy for boosting energy security through access to LNG and gas storage. Furthermore, by addressing the potential for improving energy efficiency and the use of renewable energy in the sector with an innovative, comprehensive policy, the Commission presents the way forward to move towards a smart, efficient and sustainable heating and cooling system. These proposals are part of the Commission's Energy Union strategy and will give a strong push to improving the EU's energy security and solidarity. They are also in line with the EU's commitments to fighting climate change taken at the Paris climate summit towards the end of last year.

On gas crisis prevention, the Commission plans to improve coordination between EU countries and create rules that would require an EU country to help out its neighbour if it is experiencing a very severe gas crisis. Under the so-called solidarity principle, an EU country in trouble would see gas supplies to its households and essential services ensured by neighbouring EU countries.

Gas currently covers one quarter of the EU's energy consumption and the EU is the biggest gas importer in the world. The expected decline of domestic EU gas production will also impact on gas imports. Besides, gas is also seen to play a determinant role in accompanying the EU's transition to a low carbon energy system since it is a back-up fuel for renewables when weather conditions hamper renewable energy production. The Commission has also published a proposal to tighten-up so-called intergovernmental energy agreements between an EU country and a non-EU country. The new rules will allow the Commission to take action before such agreements are signed if it assesses that such an agreement could affect the security of gas supplies in another EU country or hamper the functioning of the EU's energy market.

Finally, the Commission has outlined how better access to a rapidly developing global market in Liquefied Natural Gas (LNG) and better use of gas storage across the EU would allow EU countries that are dependent on very few gas suppliers to diversify their supply and hence strengthen their energy security.

For heating and cooling, the Commission has launched its first ever strategy to tackle the massive use of energy, particularly fossil fuels, in the sector. Heating and cooling accounts for 50% of the EU's energy consumption and renewables account for just 18% of this. The strategy includes plans to boost the energy efficiency of buildings, improve linkages between electricity systems and district heating systems which will greatly increase the use of renewable energy, and encourage reuse of waste heat and cold generated by industry.

It also aims to ease access to information for consumers to allow them to better understand their energy use and make informed choices that could save energy, as well as inform them on possible energy efficient renovations and options for generating their own energy with renewables.

For more information on the Commission's proposal, please click ***here***.

8

Commission launches public consultation on an updated EU policy on sustainable bioenergy for the period 2020-2030

The European Commission has launched a public consultation for the preparation of a sustainable bioenergy policy for the period after 2020. The objective of this survey is to consult stakeholders and citizens on an updated EU policy on sustainable bioenergy for the period 2020-2030, as part of the EU renewable energy package foreseen before the end of 2016.

More specifically, EU Member States have agreed on a new policy framework for climate and energy, including EU-wide targets for the period between 2020 and 2030. The relevant targets include reducing the Union's greenhouse gas (GHG) emissions by 40 % relative to emissions in 2005 and ensuring that at least 27 % of the EU's energy comes from renewable sources. They should help to make the EU's energy system more competitive, secure and sustainable, and help it meet its long-term (2050) GHG reductions target.

In January 2014, in its Communication on 'A policy framework for climate and energy in the period from 2020 to 2030', the Commission stated that '[a]n improved biomass policy will also be necessary to maximise the resource-efficient use of biomass in order to deliver robust and verifiable greenhouse gas savings and to allow for fair competition between the various uses of biomass resources in the construction sector, paper and pulp industries and biochemical and energy production. This should also encompass the sustainable use of land, the sustainable management of forests in line with the EU's forest strategy and address indirect land-use effects as with biofuels'. In 2015, in its Energy Union strategy, the Commission further announced that it would come forward with an updated bioenergy sustainability policy, as part of a renewable energy package for the period after 2020.

In light of the above, the Commission is currently reviewing the sustainability of all bioenergy sources and final uses for the period after 2020. Identified sustainability risks under examination include lifecycle greenhouse gas emissions from bioenergy production and use; impacts on the carbon stock of forests and other ecosystems; impacts on biodiversity, soil and water, and emissions to the air; indirect land use change impacts; as well as impacts on the competition for the use of biomass between different sectors (energy, industrial uses, food).

The consultation period ran from 10 February 2016 to 10 May 2016. For more information, please click ***here***.

9

Study finds that EU countries have taken measures to boost energy audits in companies

Energy efficiency is key to improving Europe's energy security, and the EU's most important law to boost energy efficiency – and meet the target to cut energy use by 20% by 2020 - is the Energy Efficiency Directive.

One of the rules contained in the Directive requires EU countries to ensure that large enterprises carry out energy audits. An energy audit is a thorough assessment of the energy consumption of a company including its buildings, processes and transport use. Its goal is to identify cost effective ways to save energy. Audits can identify often quite simple ways for companies to save energy and money such as properly insulating pipes in a factory.

As an alternative to regular energy audits, large enterprises can put in place an energy management system. This means they implement a strategy for achieving the company's energy saving objectives.

Large enterprises were required to carry out an energy audit by 5 December 2015, and at least every four years after that. Meanwhile, small and medium sized enterprises (SMEs) should be encouraged to carry out regular energy audits, according to the Directive.

A recently published study has found that most EU countries have activated these rules for large enterprises. The exact definition of a 'large' enterprise differs from country to country. However, some countries are still in the process of transferring the EU rules into their national legislation.

The study – entitled 'A Study on Energy Efficiency in Enterprises' - also found that some EU countries provide financial incentives for companies to carry out audits. Meanwhile, in many countries across the EU, national governments have set up information-providing events, helplines and online portals to exchange information and create tools to help companies implement the rules.

According to the study, some EU countries will carry out mandatory audits on large enterprises to ensure the rules are being adhered to; others will check a random sample of companies. Penalties for non-compliance range from €10 000 in Austria to €200 000 in Romania.

For smaller companies, the study found that financial support schemes are in place to help companies to carry out energy audits. In Germany, for example, the German SME Energy Consulting Programme provides up to 80% of the cost with a €8 000 ceiling.

The study was carried out by Ricardo Energy & Environment and the Fraunhofer Institute for Systems and Innovation Research on behalf of the

European Commission. To access the full text of the study, please click ***here***.

10

ACER publishes report with main voluntary achievements towards the single EU energy market

On 9 February 2016, the Agency for the Cooperation of Energy Regulators (ACER) published the latest edition of its Regional Initiatives Status Review Report, updating on the progress made on voluntary regional and cross-regional market integration. The report highlights important milestones such as the early implementation of the European Harmonized Allocation Rules (HAR) for the electricity market. The report also shows the progress made in pilot projects relating to the gas market, such as the implementation of the Third Package and Network Codes (NC), and market integration. Furthermore, the report describes the obstacles faced in 2015 and the challenges ahead with regard to the early implementation process of the Network Codes and Guidelines.

In the electricity field, the entry into force of the Capacity Calculation and Congestion Management Guideline (CACM GL) in August 2015 as well as the positive vote in Comitology on the Forward Capacity Allocation Guideline (FCA GL) in October 2015 have moved most projects from a voluntary to a mandatory process. In the gas field, regional initiative will remain focused on those areas where it can bring a relevant contribution to the achievement of the IEM. That will include completing the application of mandatory rules that still lack full implementation such as NCs on Capacity Allocation and Balancing, as well as developments on market integration and infrastructure.

To access the full text of the report, please click ***here***.

11

National authorities sign MoU for reducing the administrative burden for reporting about key energy infrastructure projects

On 15 February 2016, ACER published a Memorandum of Understanding signed with the Competent Authorities in 25 Member States responsible for facilitating and coordinating the permit-granting process for the development of key energy infrastructure projects in Europe. These projects of common interest (PCIs) are essential for completing the European internal energy market and for reaching the EU's energy policy objectives of affordable, secure and sustainable energy.

The agreement will allow promoters of Projects of Common Interest (PCIs) to submit a single report on the progress of their projects of common interest (PCI) to both ACER and the national Competent Authorities responsible for granting permission. To this end, ACER will provide a single reporting window to reduce their administrative burden.

Furthermore, this Memorandum of Understanding enables the participating Competent Authorities to have access to the most up-to-date PCI information, and carry out their PCI monitoring tasks in an efficient, coordinated and consistent way. At the same time, project promoters are safeguarded with regard to the confidentiality, integrity and protection of the information they provide.

The agreement was signed by the competent authorities of Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the UK.

The Competent Authorities in Germany, France and the Netherlands decided not to join the Memorandum at this time. Therefore, for these three countries, promoters will still have to report both to ACER and to the national Competent Authority.

For more information on the Memorandum of Understanding, please click ***here***.

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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