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EU Commission: Guidance for public intervention for the provision of generation adequacy and capacity mechanisms

The EU internal energy market is essential both to ensure secure energy at affordable prices and to fight climate change. In some very specific cases public intervention might be necessary to attain public policy objectives - but needs be balanced, taking into account the costs and the distortions it can create in the market. The European Commission presented on 5th November 2013 a Communication which gives guidance to Member States on how to make the most of public interventions, how to reform existing ones - especially renewable energy subsidy schemes - and how to effectively design new ones. This concerns back-up capacities for renewable energy, mostly fossil fuel energy which is produced when there is no sun or wind.

EU Energy Commissioner Günther Oettinger said: "The ultimate aim of the market is to deliver secure and affordable energy for our citizens and business. Public intervention must support these objectives. It needs to be cost-efficient and be adapted to changing circumstances."

If public interventions are not carefully designed they can severely distort the functioning of the market and lead to higher energy prices both for households and businesses. The aim of this Communication is therefore to give the Member States the necessary information, guidance and best practice in hand to make good choice for their national schemes.

Back-up capacities for Renewable Energy

When the sun is not shining and the wind is not blowing, electricity must still be produced in sufficient quantities to deliver energy to consumers and keep the electricity grid stable. With the increase of renewable energy production, this becomes a challenge. It is for this reason that in several Member States, discussions take place on how to organize and finance back-up-capacities, for example coal and gas power plants which are flexible enough to be turned on and off whenever needed.

The Communication gives guidance on how these back-up capacities can be designed in a cost-efficient way and take full advantage of the European market:

- Before deciding on capacity mechanisms, governments should first analyse the **causes** for inadequate generation.
- Secondly, they should **remove any distortions** that may in the first place **prevent the market from delivering the right incentives for investment** in generation capacity. Such causes can be: regulated prices, high subsidies for renewable energy.
- Governments should also ensure that **renewable electricity producers** react to **market signals and promote flexibility** on the demand side, for example by promoting different tariffs to consumers and therefore giving an incentive to use electricity at other times than peak times.
- Any **back-up capacity mechanism** should not be designed having only the national market in mind but the **European perspective**.

2030 climate and energy goals for a competitive, secure and low-carbon EU economy

A reduction in greenhouse gas (GHG) emissions by 40% below the 1990 level, an EU-wide binding target for renewable energy of at least 27%, renewed ambitions for energy efficiency policies, a new governance system and a set of new indicators to ensure a competitive and secure energy system. These are the pillars of the new EU framework on climate and energy for 2030 presented on the 22.1.2014 by the European Commission.

Supported by a detailed analysis on energy prices and costs, the 2030 framework will ensure regulatory certainty for investors and a coordinated approach among Member States, leading to the development of new technologies. The framework aims to drive continued progress towards a low-carbon economy and a competitive and secure energy system that ensures affordable energy for all consumers, increases the security of the EU's energy supplies, reduces our dependence on energy imports and creates new opportunities for growth and jobs, by taking into account potential price impacts on the longer term.

The Communication setting out the 2030 framework will be debated at the highest level, in particular in the European Council and European Parliament. It is accompanied by a legislative proposal for a market stability reserve for the EU emissions trading system (EU ETS) starting in 2021, to improve its robustness. A report on energy prices and costs in Europe), published alongside the Communication, suggests that the rising energy prices can be partly mitigated by ensuring cost effective energy and climate policies, competitive energy markets and improved energy efficiency.

European Commission President José Manuel Barroso said: "Climate action is central for the future of our planet, while a truly European energy policy is key for our competitiveness. Today's package proves that tackling the two issues simultaneously is not contradictory, but mutually reinforcing. It is in the EU's interest to build a job-rich economy that is less dependent on imported energy through increased efficiency and greater reliance on domestically produced clean energy. An ambitious 40% greenhouse reduction target for 2030 is the most cost-effective milestone in our path towards a low-carbon economy. And the renewables target of at least 27% is an important signal: to give stability to investors, boost green jobs and support our security of supply".

Energy Commissioner Günther Oettinger said: "The 2030 framework is the EU's drive for progress towards a competitive low-carbon economy, investment stability and security of energy supply. My aim is to make sure that energy remains affordable for households and companies. The 2030 framework sets a high level of ambition for action against climate change, but it also recognises that this needs to be achieved at least cost. The internal energy market provides the basis to achieve this goal and I will continue to work on its completion in order to use its full potential. This includes the 'Europeanisation' of renewable energy policies".

Connie Hedegaard, Commissioner for Climate Action, said: “In spite of all those arguing that nothing ambitious would come out of the Commission today, we did it. A 40% emissions reduction is the most cost-effective target for the EU and it takes account of our global responsibility. And of course Europe must continue its strong focus on renewables. That is why it matters that the Commission is proposing today a binding EU-level target. The details of the framework will now have to be agreed, but the direction for Europe has been set. If all other regions were equally ambitious about tackling climate change, the world would be in significantly better shape.”

The key elements of the 2030 policy framework set out by the Commission are as follows:

1. **A binding greenhouse gas reduction target**: A centre piece of the EU's energy and climate policy for 2030, the target of a 40% emissions reduction below the 1990 level would be met through domestic measures alone. The annual reduction in the 'cap' on emissions from EU ETS sectors would be increased from 1.74% now to 2.2% after 2020. Emissions from sectors outside the EU ETS would need to be cut by 30% below the 2005 level, and this effort would be shared equitably between the Member States. The Commission invites the Council and the European Parliament to agree by the end of 2014 that the EU should pledge the 40% reduction in early 2015 as part of the international negotiations on a new global climate agreement due to be concluded in Paris at the end of 2015.
2. **An EU-wide binding renewable energy target**: Renewable energy will play a key role in the transition towards a competitive, secure and sustainable energy system. Driven by a more market-oriented approach with enabling conditions for emerging technologies, an EU-wide binding target for renewable energy of at least 27% in 2030 comes with significant benefits in terms of energy trade balances, reliance on indigenous energy sources, jobs and growth. An EU-level target for renewable energy is necessary to drive continued investment in the sector. However, it would not be translated into national targets through EU legislation, thus leaving flexibility for Member States to transform the energy system in a way that is adapted to national preferences and circumstances. Attainment of the EU renewables target would be ensured by the new governance system based on national energy plans (see below).
3. **Energy efficiency**: Improved energy efficiency will contribute to all objectives of EU energy policy and no transition towards a competitive, secure and sustainable energy system is possible without it. The role of energy efficiency in the 2030 framework will be further considered in a review of the Energy Efficiency Directive due to be concluded later this year. The Commission will consider the potential need for amendments to the directive once the review has been completed. Member States' national energy plans will also have to cover energy efficiency.

4. **Reform of EU ETS**: The Commission proposes to establish a market stability reserve at the beginning of the next ETS trading period in 2021. The reserve would both address the surplus of emission allowances that has built up in recent years and improve the system's resilience to major shocks by automatically adjusting the supply of allowances to be auctioned. The creation of such a reserve - in addition to the recently agreed delay in the auctioning of 900 million allowances until 2019-2020 ('back-loading') - is supported by a broad spectrum of stakeholders. Under the legislation, proposed today, the reserve would operate entirely according to pre-defined rules which would leave no discretion to the Commission or Member States in its implementation.

5. **Competitive, affordable and secure energy:** The Commission proposes a set of key indicators to assess progress over time and to provide a factual base for potential policy response. These indicators relate to, for example, energy price differentials with major trading partners, supply diversification and reliance on indigenous energy sources, as well as the interconnection capacity between Member States. Through these indicators, policies will ensure a competitive and secure energy system in a 2030 perspective that will continue to build on market integration, supply diversification, enhanced competition, development of indigenous energy sources, as well as support to research, development and innovation.

6. **New governance system**: The 2030 framework proposes a new governance framework based on national plans for competitive, secure and sustainable energy. Based on upcoming guidance by the Commission, these plans will be prepared by the Member States under a common approach, which will ensure stronger investor certainty and greater transparency, and will enhance coherence, EU coordination and surveillance. An iterative process between the Commission and Member States will ensure the plans are sufficiently ambitious, as well as their consistency and compliance over time.

The Communication setting out the 2030 framework is accompanied by a **Report on energy prices and costs**, which assesses the key drivers and compares EU prices with those of its main trading partners. Energy prices have risen in nearly every Member State since 2008 – mainly because of taxes and levies, but also due to higher network costs. The comparison with international partners highlights rising price differentials, notably with US gas prices – which could undermine Europe's competitiveness, particularly for energy intensive industries. Nevertheless, rising energy prices can be partly offset by cost effective energy and climate policies, competitive energy markets and improved energy efficiency measures, such as using more energy-efficient products. European industry's energy efficiency efforts may need to go even further, bearing in mind physical limits, as competitors do the same and European industry decides to invest abroad to be closer to expanding markets. These findings inform the 2030 framework.

Next steps

The European Council is expected to consider the framework at its spring meeting on 20-21 March 2014.

Who will reserve TAP's capacity: the second "market test"

Trans Adriatic Pipeline AG (TAP AG) is the exclusive provider of transportation services and related marketing rights on the Trans Adriatic Pipeline (TAP). The current shareholders in TAP AG are BP (20%), SOCAR (20%), Statoil (20%), Fluxys (16%), Total (10%), E.ON (9%) and Axpo (5%).

TAP is a pipeline that will transport gas via Greece and Albania and across the Adriatic Sea to Italy's southern Puglia region, from sources including, but not exclusively, the Shah Deniz gas field (SD) in Azerbaijan.

On 31 August 2011 TAP AG filed an application for an exemption of the TAP Project from certain provisions related to third party access, regulated tariffs and unbundling under Article 36 of the Gas Directive. Before granting the exemption, the Authorities decided upon rules and mechanisms for management and allocation of capacity. These rules require a Market Test to be implemented.

Whereas a first, and non-binding Market Test took place from 15 June 2012 until 15 August 2012 on the basis of the Expression of Interest Phase Notice, issued by TAP AG, the second, and binding Market Test will begin on 17 March 2014, at 09.00 CET, where TAP AG will start the Booking Phase by sending the Booking Phase Notice to all registered participants.

This procedure will be followed by TAP AG, as it is part of the terms and conditions that the Authorities have set out regarding the pipeline's capacity allocation in order for TAP AG to be granted the exemption from specific obligations imposed by the European regulatory framework.

INDUSTRIAL POLICY

Competitiveness Council on 20-21 February 2014

The first Competitiveness Council under the mandate of the Greek EU Presidency took place in Brussels on 20-21 February 2014.

On 20 February, Mr Kostas Hatzidakis, Minister for Development, Competitiveness, Infrastructure, Transport and Networks, chaired the Council for the industry and internal market points. The European Commission was represented by Vice-President Antonio Tajani, Commissioner for Industry and Entrepreneurship; Vice-President Joaquín Almunia, Commissioner for Competition; Commissioner Michel Barnier responsible for Internal Market and Services and Commissioner Tonio Borg, responsible for Health.

On 21 February, Mr Christos Vasilakos, Secretary General for Research and Technology at the Ministry for Education and Research, chaired the Council for the research and space points. The European Commission was represented by Vice-President Antonio Tajani, Commissioner for Industry and Entrepreneurship and Commissioner Máire Geoghegan-Quinn, responsible for Research and Innovation.

Industrial Competitiveness

On 20 February, the Competitiveness Council kicked off the political debate on EU industrial competitiveness in the run-up to the March 2014 European Council on industrial competitiveness. The latter will provide a unique opportunity to strengthen Europe's industrial competitiveness by mobilising actors to implement concrete measures across the economy to deliver industrial change. High-level political support is needed to facilitate the implementation of industrial policy and structural reforms, both at EU and at national and regional levels.

Vice-President Tajani presented four recently adopted Commission Communications. Firstly, he described the Communication "*For a European industrial renaissance*" (IP/14/42 and MEMO/14/37) in which the Commission has set out its key priorities for industrial policy, providing an overview of actions already undertaken, and put forward a limited number of new actions to speed up the attainment of its overarching objective: raising the contribution of industry to GDP to as much as 20% by 2020. Secondly, he highlighted the main conclusions of the Communication "*A vision for the internal market for industrial products*": internal market legislation for products is not only a key factor for the competitiveness of European industry but also for consumer and environmental protection. However, it also emphasizes that efforts to strengthen enforcement mechanisms need to be stepped up. Thirdly, he discussed industry challenges linked to the high prices of energy as underlined in the Communication on "*Energy prices and costs in Europe*". Finally, Vice President Tajani presented "*A policy framework for climate and energy in the period from 2020 to 2030*" which represents a new step on the EU's path to achieve by 2050 a competitive, low carbon economy. In order to ensure the environmental integrity of our energy and climate policy - while maintaining in Europe a vivid and flourishing industry along the entire industrial value chain - the Commission proposed to maintain its measures against carbon leakage

More information can be found at:

http://ec.europa.eu/enterprise/initiatives/mission-growth/index_en.htm

http://ec.europa.eu/enterprise/policies/single-market-goods/internal-market-for-products/index_en.htm

http://ec.europa.eu/enterprise/policies/industrial-competitiveness/monitoring-member-states/index_en.htm

http://ec.europa.eu/energy/2030_en.htm

STATE AID

State aid: Commission adopts new guidelines on state aid to airports and airlines (Aviation Guidelines)

The European Commission adopted new guidelines on how Member States can support airports and airlines in line with EU state aid rules. The guidelines are aimed at ensuring good connections between regions and the mobility of European citizens, while minimising distortions of competition in the Single Market. They are part of the Commission's State Aid Modernisation (SAM) strategy, which aims at fostering growth in the Single Market by encouraging more effective aid measures and focusing the Commission's scrutiny on cases with the biggest impact on competition (see IP/12/458).

Joaquín Almunia, Commission Vice-President in charge of competition policy, said: "*The new state aid guidelines are a key ingredient for a successful and competitive European aviation industry. They will ensure fair competition regardless of the business model – from flag carriers to low-cost airlines and from regional airports to major hubs. Our aim is to ensure the mobility of citizens, while preserving a level playing field between airports and airlines.*"

The new guidelines for State aid to airports and airlines promote sound use of public resources for growth-oriented initiatives. At the same time, they limit distortions of competition that would undermine a level playing field in the Single Market, in particular by avoiding overcapacity and the duplication of unprofitable airports.

Key features are:

- State aid for *investment in airport infrastructure* is allowed if there is a genuine transport need and the public support is necessary to ensure the accessibility of a region. The new guidelines define maximum permissible aid intensities depending on the size of an airport, in order to ensure the right mix between public and private investment. The possibilities to grant aid are therefore higher for smaller airports than for larger ones.
- *Operating aid to regional airports* (with less than 3 million passengers a year) will be allowed for a transitional period of 10 years under certain

conditions, in order to give airports time to adjust their business model. To receive operating aid, airports need to work out a business plan paving the way towards full coverage of operating costs at the end of the transitional period. As under the current market conditions, airports with an annual passenger traffic of below 700 000 may face increased difficulties in achieving full cost coverage during the transitional period, the guidelines include a special regime for those airports, with higher aid intensities and a reassessment of the situation after 5 years.

- *Start-up aid to airlines* to launch a new air route is permitted provided it remains limited in time. The compatibility conditions for start-up aid to airlines have been streamlined and adapted to recent market developments.

The formal adoption and publication of the new guidelines in the Official Journal in all EU official languages is foreseen for March 2014. For information purposes, the text of the new guidelines is available in English at:

http://ec.europa.eu/competition/state_aid/modernisation/index_en.html

State aid: Commission finds that public interventions at Berlin Schönefeld Airport did not involve state aid

The European Commission has concluded that various measures taken by the publicly-owned Berlin Schönefeld Airport manager FBS did not confer any undue economic advantage to the airport or to the airlines operating at the airport, and were therefore in line with EU state aid rules. The financial incentives foreseen were well-targeted and allowed sustainable growth of the airport while paving the way for its replacement by the new Berlin Brandenburg airport, to be built at the same location.

In 2007, following several complaints, the Commission initiated an in-depth investigation (see IP/07/1050) into (i) an agreement providing for a "compensation" of losses generated by Schönefeld airport through the profits generated in other airports managed by the airport manager FBS, (ii) several bilateral agreements concluded between FBS and various air carriers (iii) a tenancy agreement between FBS and easyJet governing easyJet's use of certain offices and check-in desks at Schönefeld.

The Commission found that maintaining Schönefeld in operation instead of closing it down was a rational decision that any private operator would have made in similar circumstances. Indeed, the Berlin-Brandenburg airport project, to be built at the location of Schönefeld, would have been negatively affected by an early closure of Schönefeld since it would have needed to file for a new operation license and it would have suffered from limited traffic at the start of its operations. The profit and loss transfer agreement therefore conferred no advantage to Schönefeld that FBS could not have been obtained from the private market. Therefore, it did not involve any state aid to the airport.

The Commission's investigation also showed that each of the agreements concluded between FBS and airlines operating at Schönefeld could have been reasonably expected to improve the financial situation of the airport when they were entered into. The investigation also demonstrated that the easyJet tenancy agreement was rational in terms of facilities management and concluded on market terms. Therefore, none of these arrangements involved any state aid to the airlines concerned.

The non-confidential version of the decision will be made available under the case number SA.15376 in the State Aid Register on the DG Competition website once any confidentiality issues have been resolved.

M&A Law Firm official contributor of the Greek EU Presidency Summit of the Economist

Dr. Metaxas, Managing Partner of Metaxas & Associates Law Firm, participated in the Greek EU Presidency Summit of The Economist as a Speaker in the panel focusing on recent developments in the energy sector. His intervention, highlighting the failures caused by the absence of any concrete, well-designed, long-term strategy on industrial policy in Greece, was followed by the comments of Mr. Zervos, President and CEO of the Public Power Corporation, who tried to uphold PPC' s pricing policy on industrial consumers. Dr. Metaxas underlined the legal obligation of PPC, the dominant supplier in the Greek market, to proceed to negotiations in order to provide major industrial customers with customized electricity bills based upon the latter's energy-consuming profile. He also stressed the fact that no supplier, active in a truly competitive market, would be able to pass on to consumers all and any kind of costs he bears and, hence, PPC's pricing policy could only be explained in the context of the quasi monopolistic structure of the Greek electricity market.

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