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Energy Dialogues: the second consecutive ‘Energy Dialogues’ conference took place on December 14th, 2015

On Monday, December the 14th 2015, the “Energy Dialogues” conference, an important initiative of the [Hellenic Energy Regulation Institute \(HERI\)](#) and Energy Press, took place for the second consecutive year at the Athens Chamber of Commerce and Industry. The event, which aims to establish an open scientific dialogue on important issues pertaining to the Greek and EU energy market, revolved around two basic thematic axes: first, the objective of the opening of the retail electricity market under the Memorandum of Understanding that was recently concluded between Greece and its creditors and, second, the establishment of a new support framework for Renewable Energy Sources (RES) in Greece.

The introductory speech was given by the Chairman of the Hellenic Energy Regulation Institute, Dr. A. Metaxas, who was also responsible for the overall scientific supervision of the event. Dr. Metaxas outlined the key issues of the discussion and their importance for the discourse currently surrounding the regulatory re-configuration of the Greek energy market. Upon concluding his speech, Dr. Metaxas gave the floor to the Minister of Energy and Environment, Mr. Skourletis, for his keynote address.

The Minister congratulated the organizing team for what he characterized as “*one of the most important initiatives currently underway*”, before expressing his views on the themes of the conference. Mr. Skourletis’ speech gave special emphasis to the unbundling of the Independent Power Transmission Operator (IPTO), providing extensive information on the state of play of the relevant negotiations between the Greek State and its creditors.

Subsequently, through their participation in two distinct panels, each covering one of the basic themes of the conference, the leading players of the Greek energy market took turns expressing their views on the issues raised in the questionnaire that had been previously addressed to them by the organizers.

The first panel, which discussed the opening up of the retail electricity market, featured P. Aslanis, Director of the Power Exchange Transactions Department of IPTO (who substituted for Y. Blanas, Chief Executive Officer of IPTO), A. Garis, Chairman and CEO of LAGIE (Operator of the Electricity Market), G. Stamtzis, General Manager of HAIPP (Hellenic Association of Independent Power Producers), K. Athanassiadis, President of ESEPIE (Hellenic Association of Energy Trading and Supply Companies), and A. Kontoleon, Board Member of UNICEN (Hellenic Union of Industrial Consumers of Energy). The second panel, which discussed the establishment of a new RES support framework, consisted of D. Papachristou, representative of RAE, M. Filippou, Director of LAGIE, Ulr. Laumanns, Project Manager of GIZ GmbH, S. Seimanidis, President of EREF (European Renewable

Energies Federation), P. Papastamatiou, Board Member of ELETAEN (Hellenic Wind Energy Association), S. Loumakis, President of SPEF (Hellenic Association of Photovoltaic Energy Producers), S. Kapellos, President of HELAPCO (Hellenic Association of Photovoltaic Companies), and K. Vassilikos, President of ESMYE (Hellenic Micro-Hydropower Association).

The speeches given by the members of each panel were followed by a lively Q&A session with the attendees. It is worth mentioning that the Hellenic Energy Regulation Institute provided live coverage of the event via social media, while the conference was also streamed live online. The organizers were particularly pleased to note that the live stream of the “Energy Dialogues” reached more than 2.000 views.

Finally, the Hellenic Energy Regulation Institute would like to inform you that a collected edition of the speeches given at the conference will soon be published, providing all interested parties with an opportunity to expand their knowledge vis-à-vis the functioning of the Greek energy market.

To watch the “Energy Dialogues” conference, please click [here](#).

1. Commission invites Greece to better target its "tonnage tax" and related support measures in the maritime sector

The European Commission has sent a set of proposals to Greece to ensure that state support to the maritime sector complies with EU state aid rules. The relevant support scheme is provided for under Greek Law 27/1975 on the taxation of ships, the application of a duty for the development of merchant shipping, the establishment of foreign shipping companies and related matters. Due to the fact that it was put in place prior to Greece’s accession to the European Union, the scheme in question constitutes “existing aid” and is therefore subject to a specific cooperation procedure. The Commission launched the said procedure in August 2012 by expressing, in a service letter, its preliminary concerns regarding the compliance of the Greek legislation with EU state aid rules. This was followed by exchanges with the Greek authorities.

The Commission acknowledges the importance of maintaining a competitive maritime transport sector in the EU. EU state aid rules establish common rules on how Member States can support maritime transport providers, without unduly distorting competition in the Single Market. In particular, the Maritime Guidelines enable Member States to tax shipping companies on the basis of the tonnage of the fleet (i.e. based on size of shipping fleet) rather than the actual profits of the company. These measures were introduced to encourage EU ship-owners to flag their ships and carry out ship-management activities in the EU, rather than relocate those activities outside the EU.

However, in order to avoid subsidy races between Member States and limit the distortions of competition created by state support, these provisions need to be applied consistently throughout the EU and comply with the conditions set out in the Maritime Guidelines.

Accordingly, in its decision of 21 December 2015, the Commission found that current provisions may breach EU state aid rules by allowing shareholders of shipping companies to benefit from favourable tax treatment that should be reserved for maritime transport providers. Similarly, the Commission is concerned that favourable tax treatment is also extended to maritime sector intermediaries and operators of ships, which do not provide maritime transport services. The Commission is concerned that the Greek tonnage tax system is not well targeted and benefits the shareholders of shipping companies as well as companies other than maritime shipping companies, beyond what is permitted under the Maritime Guidelines. The Commission has therefore asked Greece to review which vessels are eligible under its system and exclude fishing vessels, port tugboats, as well as yachts rented out to tourists without a crew from the preferential regime. Operators of such vessels should be subject to the standard income tax in the future. Preferential tax treatment should also be removed for insurance intermediaries, maritime brokers and other maritime intermediaries as well as the shareholders of shipping companies – none of which conduct genuine maritime transport activities.

The Commission's requests do not concern the core of the Greek shipping economy, notably the operation of bulk carrier and tanker vessels. These can continue to benefit from a tonnage-based taxation instead of profit-based taxation as long as operators of such vessels maintain the share of the fleet they have under EU or European Economic Area flags.

Greece now has two months to inform the Commission whether it agrees to the measures proposed, in which case it would need to amend its national rules with effect from 1 January 2019 at the latest. This is in line with the Memorandum of Understanding signed with Greece in August 2015 which foresees that the special crisis contributions by maritime companies and their shareholders will be maintained until end-2018.

2. Commission concludes that the resolution of Greek Cooperative Bank of Peloponnese involves no aid

The Bank of Greece has decided to put the small cooperative bank (with less than 0.1% market share in Greece) into resolution because it had a capital shortfall and did not succeed in raising new capital from private investors. Under the resolution plan, the existing entity will be put into liquidation, including all its activities except deposits. All deposits of Cooperative Bank of Peloponnese will be transferred to National Bank of Greece (NBG), which acquired at market value the deposits in a

bidding process. Depositors therefore remain fully protected. The transfer of the deposits will be financed by the Greek Resolution Fund. The Commission has found that the support provided by the Greek Resolution Fund does not constitute aid because the deposits of the Cooperative Bank of Peloponnese are transferred at market value and the rest of the bank is liquidated without any State aid. The Commission also observed that the acquisition of the deposits reinforces the liquidity position of NBG, and hence is not contrary to the amended restructuring plan of National Bank of Greece approved on 4 December 2015.

3. Commission opens in-depth investigation into UK public support for Drax power plant

The European Commission has opened an in-depth investigation to assess whether the United Kingdom's plans to support the conversion of part of the Drax coal power plant to operate on biomass are in line with EU state aid rules. The Commission fully supports Member State efforts to increase the use of renewable energy and pursue EU energy and climate objectives. At the same time, EU state aid rules ensure that the cost of such support for consumers is limited and does not give certain operators an unfair advantage over competitors. Therefore, the Commission will now investigate further to make sure that the public funds used to support the Drax project are limited to what is necessary and do not result in overcompensation. It will also assess whether the positive effects of the project in achieving EU energy and environmental objectives outweigh potential competition distortions in the market for biomass. The opening of an in-depth investigation gives the UK and interested third parties an opportunity to submit comments. It does not prejudge the outcome of the investigation.

In April 2015 the UK notified plans to subsidise the conversion of one unit of the coal-fired Drax power plant to operate entirely on biomass. The unit concerned by this measure would have the capacity to generate 645 MW of renewable electricity running exclusively on wood pellets. The measure fixes a certain price ('strike price') for the electricity generated. If the average wholesale price of electricity falls below the strike price, the Drax power plant operator would receive an additional payment on top of the money it earns from selling its electricity into the market. According to UK estimates, the project would operate until 2027 and supply about 3.6 TWh of electricity per year. The plant would require approximately 2.4 million tonnes of wood pellets per year, mainly sourced from the United States and South America.

In its preliminary analysis, the Commission considered that the estimates of the plant's economic performance may be too conservative. A positive change in operating parameters could significantly affect the project's rate of return. At this stage, the Commission therefore has concerns that the actual

rate of return could be higher than the parties estimate and could lead to overcompensation. Moreover, the amount of wood pellets required is considerable, as compared to the volume of the global wood pellets market and demand from the Drax conversion project could significantly distort competition in the biomass market. The Commission is therefore also concerned that on balance the measure's negative effects on competition could outweigh its positive effect on achieving EU 2020 targets for renewable energy. The Commission will investigate further to see if its concerns are justified. It will give all interested parties the opportunity to express their views on these issues before finalising its assessment.

4. Commission approves aid for National Bank of Greece on the basis of an amended restructuring plan

In the context of the third economic adjustment program for Greece, the European Commission has approved additional state aid of €2.71 billion to National Bank of Greece under EU state aid rules, on the basis of an amended restructuring plan. The Commission concluded that the measures already implemented as part of the bank's existing restructuring plan of July 2014, in addition to those envisaged in the amended plan, will enable National Bank of Greece to ensure lending to the Greek economy in line with EU state aid rules, in particular the “2013 Banking Communication”, and the Bank Recovery and Resolution Directive.

As part of the third economic adjustment program, on 31 October 2015, the comprehensive assessment carried out by the Single Supervisory Mechanism (SSM) to ensure that the four systemic Greek banks are adequately capitalised identified a capital shortfall of €4.6 billion for National Bank of Greece. National Bank of Greece has succeeded in covering in total €1.8 billion of this capital needs by private means (existing creditors, through voluntary and mandatory exchange of their notes for new shares, and new investors through international and Greek offerings). As agreed as part of the third economic adjustment program, junior and senior bondholders that did not participate in the voluntary exchange will have their debt converted into equity before any public capital is injected. Furthermore, the SSM also approved additional internal capital actions of the bank of €120 million stemming from its positive 3rd quarter results. This means that National Bank of Greece has raised sufficient capital from private investors to cover its asset quality review and baseline scenario capital needs under the SSM's comprehensive assessment. The level of private capital is a sign of market confidence in the restoration of the long-term viability of this bank. It also shows that contributions by junior and senior bondholders can significantly reduce the need for injections of taxpayer money to support banks, whilst preserving financial stability.

The remaining balance of the capital needs amounting to €2.71 billion (as identified in the so-called stressed scenario of the SSM's comprehensive assessment) will be covered by state aid injected by the Hellenic Financial Stability Fund (HFSF). This will take the form of a combination of share capital and contingent convertible capital instruments. The funding will be provided by the European Stability Mechanism (ESM) in the framework of the economic adjustment program agreed with Greece with €10 billion funding made available to cover potential capital needs of the banking sector.

On this basis, the Greek authorities proposed changes to National Bank of Greece's restructuring plan approved in July 2014 in addition to the extensive restructuring already implemented. These changes include a deepening of the bank's operational restructuring and some amendments of deadlines in response to the changes in the bank's macroeconomic situation, as well as a commitment to further dispose of non-core assets outside of Greece. Subject to approval by the SSM, proceeds from the sale of foreign assets will be used to repay the contingent convertible capital instruments injected by the HFSF. The Commission took into account the fact that most of National Bank of Greece's difficulties did not come from excessive risk taking but from the uncertainty and the events that led to the agreement of the third economic adjustment program for Greece in August. Therefore, it found the measures proposed in the revised restructuring plan are sufficient to limit distortions of competition as a result of the state aid and, in particular, requested no downsizing in the bank's core bank lending activities in Greece.

As part of its state aid decision, the Commission has also verified that the capital injection by the HFSF can be granted as a precautionary recapitalisation within the meaning of the Bank Resolution and Recovery Directive (BRRD). It concluded that all the conditions of the BRRD to grant the aid without having to put the bank into resolution were met.

5. European Commission publishes report on “Options for future European Electricity Operation”

The European power sector is undergoing important changes. Especially the increasing penetration of renewable energy sources (RES), as part of the transition to a de-carbonized power system, results in a need to continuously assess and decide upon (the adoption of) alternative technologies, policies and practices. Released in December 2015, the European Commission's report entitled “Options for future European Electricity Operation” focuses upon the areas of system operations and planning, and options for improvements in accommodating and dealing with the changes in the European system.

The current efforts to improve coordination between TSOs, and embedding these efforts into network codes are important steps. Worries among policy makers and other industry stakeholders (e.g. generation companies and large consumers) however, concern issues pertaining to shortcomings in wholesale market integration and the question of whether the pace of developments in system operations can keep up with the pace of change in the system. This is driven by the fact that TSOs operate their systems based on largely national approaches, resulting from the historic development of national power systems and their operations.

The pace of changes in the European system is strengthened by the fact that physical power flows do not recognize country borders. This can have (unexpected) negative effects (e.g. loop and transit flows) and affects the (further) optimization towards the goals of the IEM. Such impacts invoke a need to re-think the current and future framework for system operations.

With the above-mentioned challenges in mind, a consortium of Ecorys, ECN and DNV GL, set out to develop a target model for transmission system operations that is implementable in 2020, and able to meet the challenges that can be expected up to at least 2025.

In light of the aforementioned, the Commission's report seeks to answer the following questions:

- What are the requirements for SO in 2025?
- Which functions should be alternatively organized to ensure the best fit with the overall strategic goal of a secure, affordable and sustainable energy supply to all European consumers?
- Which geographic regions could be distinguished?
- What is a suitable governance structure for future SO?
- Which high level implementation stages can be distinguished to move from current state to the target model in 2020?

For the full text of the report, please click [here](#).

6. Commission refers Greece to Court for failing to comply with obligations under the Energy Performance of Buildings Directive

The European Commission has decided to refer Greece to the Court of Justice of the EU for not having calculated the cost-optimal levels of minimum energy performance requirements for buildings. The Energy Performance of Buildings Directive (Directive 2010/31/EU) and its Delegated Regulation and Guidance document establish a benchmarking mechanism to calculate the cost-optimal level of energy performance requirements for new and existing buildings, both residential

and non-residential. This benchmarking mechanism is established by a framework methodology that allows the comparison of energy efficiency measures, measures incorporating renewable energy sources and different combinations of these measures, based on primary energy performance and costs, taking into account an estimated building lifetime.

The use of the comparative cost-optimal framework methodology aims to ensure that Member States have similar levels of ambition for establishing minimum performance requirements for new and existing buildings, and building elements, and keeping performance under review by taking into account market and technical developments. Furthermore, it allows defining building and building element efficiency levels which are cost-efficient for investors, promoters and home owners. Calculating the cost-optimal levels is key for Member States to fully exploit the energy efficiency and renewable energy potential of the national buildings stock and to avoid citizens spending more money than necessary on efficiency improvements to their housing and offices. The lack of such calculations would also affect the ability of individual owners and tenants to take the right decisions for new constructions or renovations.

Following a number of informal exchanges, Greece was officially reminded of its obligation to perform the necessary calculations and to submit a report to the Commission on 11 July 2014. Having not done this, Greece received a reasoned opinion on 27 November 2014. To date, Greece is the only Member State that did not perform the cost-optimal calculations and did not send a report to the Commission. Therefore, the Commission has decided to refer Greece to the Court of Justice of the EU.

7. European Commission launches consultation on the preparation of a new renewable energy directive for the period after 2020

Through the adoption of the Energy Union Framework Strategy, the EU seeks to develop a long-term, secure, sustainable and competitive energy system as well as to establish and maintain the position of a leader in the field of renewable energy. It is therefore of the utmost importance that the share of renewable energy sources in the EU continues to increase. To this end, and in acknowledgement of the fact that renewables should continue to play a key role in helping the EU to meet its energy needs beyond 2020, Member States have already set a new renewable energy target of at least 27% of final energy consumption in the EU as a whole by 2030.

As the current legislation will not be sufficient for this purpose, there is a need to modify the current framework. Accordingly, in its Energy Union Framework Strategy, the European Commission

announced a new renewable energy package for the period after 2020, which will include a new renewable energy directive (REDII) and an updated EU bioenergy sustainability policy.

On 18 November 2015, the European Commission launched a public consultation entitled "Preparation of a new Renewable Energy Directive for the period after 2020". The objective of this survey is to consult stakeholders and citizens on REDII, the adoption of which is foreseen before the end of 2016. The bioenergy sustainability policy, which will constitute an integral part of the new renewable energy package, will be covered by a separate public consultation.

The results of the REDII consultation, together with the results of the separate public consultation launched by the Commission in July 2015 concerning market design (available here), will inform the impact assessment for REDII.

8. Commission concludes that the Belgian "Excess Profit" tax scheme is illegal; around €700 million to be recovered from 35 multinational companies

The European Commission has concluded that selective tax advantages granted by Belgium under its "excess profit" tax scheme are illegal under EU state aid rules. The said scheme, applicable since 2005, enabled the Belgian tax authorities to issue tax rulings to specific multinationals. These rulings artificially lowered the companies' tax base by deducting so-called "excess profit". The scheme assumes that the multinational makes profit that a hypothetical stand-alone company in a comparable situation would not have made. This so-called "excess profit" allegedly results from the advantages of being part of a multinational group, such as synergies and economies of scale. Under the scheme, this "excess profit" should not be taxed in Belgium, and the company's tax liability is reduced accordingly. In practice, this usually meant that the companies concerned did not pay taxes on more than 50% of their actual profits, and in some cases up to 90%.

The scheme is against EU state aid rules for the following reasons: First of all, it deviates from the normal practice under Belgian company tax rules. It gives those multinationals able to obtain the above-described tax rulings a preferential, selective subsidy compared with their competitors liable to pay taxes in Belgium under the normal Belgian company tax rules. Secondly, even if one assumes that being a multinational generates an "excess profit", it should be shared between its group companies in a way that reflects economic reality. This follows from what we call the "arm's length principle" on allocating profits between a group of companies at market terms. However, under the Belgian scheme, alleged "excess profit" is simply discounted unilaterally from the tax base of a single group company. Finally, contrary to what Belgium claimed, the scheme cannot be justified by the need to prevent double taxation. The discounted profits are not taxed elsewhere. The scheme does

not even require companies to demonstrate any evidence or even risk of double taxation. Instead of preventing double taxation, in reality the scheme gives a 'carte blanche' to double non-taxation.

Since the Commission opened its investigation in February 2015, Belgium has put the "excess profit" scheme on hold and has not granted any new tax rulings. However, companies that had already received tax rulings under the scheme since it was first applied in 2005 have continued to benefit from it. In order to remove the unfair advantage the beneficiaries of the scheme have enjoyed and to restore fair competition, Belgium now has to recover the full unpaid tax from the at least 35 multinational companies. Which companies have in fact benefitted from the illegal tax scheme and the precise amounts of tax to be recovered from each company must now be determined by the Belgian tax authorities. The Commission estimates that it amounts to around €700 million in total.

Finally, it should be noted that, on 28 January, the Commission launched a package of initiatives to combat corporate tax avoidance within the EU and throughout the world. The proposals, which rest on the simple principle that all companies, big and small, must pay tax where they make their profits, reflect the three core pillars of the Commission's agenda for fairer taxation, namely ensuring effective taxation in the EU, increasing tax transparency and securing a level playing field. You can find out more about the aforementioned package of initiatives [here](#).

9. Commission accepts commitments by Bulgarian Energy Holding to open up Bulgarian wholesale electricity market

The European Commission has adopted a decision that renders legally binding the commitments offered by Bulgarian Energy Holding (BEH) to end competition restrictions on Bulgaria's wholesale electricity market. The Commission had concerns that BEH, which is the State-owned Bulgarian energy incumbent, may have abused its dominant position on the market for the wholesale supply of electricity at freely negotiated prices (therefore non-regulated prices), in breach of EU antitrust rules (Article 102 of the Treaty on the Functioning of the European Union - TFEU). In particular, the Commission investigated clauses in electricity supply contracts concluded between BEH's production subsidiaries and third parties, such as traders, that impose restrictions on where these third parties could resell the electricity bought from BEH.

To address the Commission's concerns, BEH has committed to offer certain volumes of electricity on an independently-operated day-ahead market on a newly-created power exchange in Bulgaria. Power exchanges ensure anonymous trading of electricity, thus preventing the seller from enforcing territorial restrictions on resale. More specifically, BEH will set up a power exchange with the assistance of an independent third party with expertise in the area, and transfer control of the

ownership of the new power exchange to the Bulgarian Ministry of Finance. These measures will ensure the independence of the power exchange.

In addition to this and in order to ensure the liquidity of the exchange, BEH will offer minimum stipulated volumes of electricity on the Bulgarian power exchange for a period of five years. These volumes will be put for sale in the day-ahead market, with a maximum price based on the marginal costs of BEH's production subsidiaries. The volumes offered will vary on an hourly basis, in line with electricity consumption patterns in Bulgaria.

After market-testing the commitments offered by BEH, the Commission is satisfied that they will address its competition concerns by facilitating the trading of electricity, improving price transparency on the market and promoting the integration of the Bulgarian wholesale electricity market with the markets of neighboring countries. The Commission has therefore made the commitments legally binding on BEH and its subsidiaries.

10. Commission opens formal investigation in the biofuels sector concerning ethanol benchmarks

The European Commission has opened a formal antitrust investigation to scrutinize whether three ethanol producers have, in breach of EU antitrust rules, manipulated ethanol benchmarks published by a price reporting agency. The companies concerned are Abengoa S.A. of Spain, Alcogroup S.A. of Belgium and Lantmännen ek för of Sweden, together with their relevant subsidiaries. They produce, distribute and trade ethanol.

Ethanol is an alcohol made from biomass (such as wheat, maize or sugar beet) that is mainly added to gasoline and used as a biofuel for certain motor vehicles. The Commission has concerns that these companies may have colluded to manipulate ethanol benchmarks published by the price reporting agency Platts, for example by agreeing between them to submit or support bids with a view to influencing benchmarks upwards and thus driving up ethanol prices. Such practices, if confirmed, harm competition and undermine EU energy objectives by increasing prices for renewable energy, namely biofuels used for transport. This could lead to a reduction of the use of biofuels as an alternative to fossil fuels, with negative consequences both for consumers and the environment.

The prices assessed and published by price reporting agencies such as Platts serve as benchmarks for trade in the physical markets and in the financial derivative markets for a number of commodity products both in Europe and worldwide. In 2013, the Commission proposed a Regulation to enhance

the governance, integrity and reliability of benchmarks used in financial instruments and contracts. This Regulation is at the final stage of adoption by the Council and European Parliament.

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