

To: Ms Violeta Iftinchi
Directorate-General for Competition
European Commission
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Subject: Prolongation of the Greek interruptibility and flexibility schemes

Dear Ms Iftinchi,

We are writing in relation with Greece's plans, revealed in the media¹, to prolong or renew the flexibility and interruptibility schemes which prolongation was authorised by the Commission already in 2018 (respectively SA.50152 and SA.48780).

General observations

ClientEarth takes the view that flexibility and interruptibility schemes can, in certain circumstances, contribute to ensuring security of supply at a lesser cost and in a less distortive manner than market-wide capacity mechanisms. Nevertheless, the possible prolongation or renewal of these two schemes has to be assessed carefully in light of the long delays of Greece in implementing its market reforms known as the Target Model. Flexibility and interruptibility schemes are resource adequacy measures subject to Chapter IV of the recast Electricity Market Regulation ("**EMR**") and as such shall be contemplated as "last resort" measures², only when adequate market reforms are not able to achieve the expected results.

The delayed reform of the Greek energy market

As we already wrote to you on 10 May 2019 in relation with Greece's proposed market-wide capacity mechanism (see para. 13-20 of our observations³), the Commission had already authorised the prolongation of the interruptibility scheme for two years "*in view of the need to improve the adequacy assessment and in view of the imminent market reforms that will enable demand response participation on the electricity market.*" However, the market reforms promised at the time of introducing both schemes have still not been completed

¹ <https://energypress.gr/news/dieti-paratasi-provlepei-elliniko-aitima-gia-ti-diakopsimotita-poy-estalistis-vryxelles>

² Article 21(1) EMR.

³ <https://www.documents.clientearth.org/library/download-info/observations-on-the-proposed-greek-capacity-mechanism/>

within the timeline announced to the Commission; on the contrary, they have been delayed since 2017 and are still not live.

The schemes have already been prolonged - and **have cost money to consumers⁴ and electricity producers (with solar power being the most impacted due to the levy formula⁵) - without a valid reason other than Greece's delay in complying with its obligations. Another prolongation of the flexibility and interruptibility schemes would clearly keep on dis-incentivising Greece to implement the Target Model speedily.** Those market reforms would enable Greece to cope with the problems it tends to address in the proposed schemes. Greece is on the right track to transition to a cleaner energy system in some respects (e.g. coal phase out announcements) and it should also be attentive to all signals that would make the country reform its electricity market speedily and for the longer term.

The prolongation or renewal of the schemes

Moreover, there is no need for prolonging the interruptibility scheme. By contrast to 2018 when the Commission prolonged the schemes without having all data in hand (see para. 45 of the decision in SA.48780), there is now a resource adequacy assessment⁶ which finds that there will be **no resource adequacy concern in 2020-2030.**

Before deciding on the request of the Greek authorities, it would be useful for the Commission to investigate how often the schemes have been effectively used. It would be useful to gather data from the relevant authorities that prove an actual system stress that activated the schemes. The sense amongst Greek market participants is that there has never been a need to activate any of the schemes.

It seems that the stress event that took place in Winter 2016/2017, which activated the interruptibility scheme, could have been avoided if cross-border electricity flows were properly managed by the relevant system operators.

No other, real scarcity event has been noticed nor is foreseen in the Greek market, which has not experience events of unreliability. Even the TSO does not foresee a stress event in the future when the lignite fleet will be retired. We therefore invite the Commission to reconsider the schemes pursuant to para. 51 of the decision in SA.48780.

⁴ The flexibility scheme is financed by a levy on consumer bills.

⁵ The interruptibility scheme is financed by a levy on electricity producers. See Article 143B of the Law 4001/2011 as supplemented by Ministerial Decision ΥΠΕΝ/ΥΠΠΓ/32920/9181, National Gazette B' 4546/21.12.2017. The levies are described in Article 9 of the Ministerial Decision. Solar and wind contribute by 1,8% and 1.0% of the gross income respectively, while lignite and gas contribute 0.2% and 0.1% respectively.

⁶ http://www.admie.gr/fileadmin/groups/EDAS_DSS/2020-2030_Meleti_Eparkeias_Ischyos_.pdf

Challenges against the schemes before the National Council of State

It is our understanding from Greek media that both schemes have been challenged by market participants before the Council of State, the Greek Supreme administrative court.

The interruptibility scheme was challenged in 2016 by the Hellenic Association of Photovoltaic Energy Producers ("**SPEF**") on the grounds of discrimination against RES and lack of necessity for security of supply. The hearing has been adjourned several times.

The flexibility mechanism was challenged in October 2018 by the Public Power Corporation ("**PPC**") on the grounds of discrimination of RES (hydropower) against natural gas⁷.

We could not find publicly available information on the hearings or the decisions, if any, of the Council of State. We invite the Commission to request the relevant information from the Greek authorities before deciding on the schemes.

Compliance with EMR

Should the Commission nonetheless believe that the flexibility and interruptibility schemes can be prolonged or renewed the schemes will have to be assessed under the new requirements introduced by the EMR. In addition to the design principles enshrined in Article 22 EMR the main steps described in the new rules that apply before the introduction or extension (grant of new contracts) of a scheme are:

1. Identification of a resource adequacy concern: In principle, this should be done through the European Resource Adequacy Assessment ("**ERAA**", Article 20(2) EMR). National Resource Adequacy Assessments ("**NRAA**") are necessary only if a security of supply concern has not been identified in the ERAA (Articles 20(1)(2), 24(1) EMR). If there is a need for a NRAA, this should be conducted in line with the methodology described in Article 23(5)(6) EMR. Both the ERAA and the relevant methodology are currently under process and they are expected by July 2020 for the latter and later this year for the former.

The Greek TSO, ADMIE, published on 14 January 2020 a NRAA⁸. The NRAA assesses adequacy on the basis of the draft National Energy and Climate Plan ("**NECP**") of December 2019. Without getting into the details of the NRAA and the NECP, the main conclusion of the TSO is **that there will be no resource adequacy concern in the Greek energy system in the years 2020-2030**. The report identifies a couple of resource adequacy scenarios, mainly in 2021. However, even in these scenarios, the wording of the report such as "*under adverse conditions, there is a possibility*" (page 60), "*it seems that it is possible that*" (page 61),

⁷ See: <https://energypress.gr/news/sto-symvoylio-tis-epikrateias-prosfeygei-i-dei-kata-toy-metavatikoy-mihanismoy-apozimiosis>

⁸ Available in Greek at http://www.admie.gr/fileadmin/groups/EDAS_DSS/2020-2030_Meleti_Eparkeias_Ischyos_.pdf

demonstrates a **very low probability** or a **very high uncertainty** of a stress event ever occurring.

A very low probability scenario is not sufficient to justify a resource adequacy measure that could otherwise be coped with by implementing the adequate market reforms.

It must be noted that the reliability standard, the cornerstone of the resource adequacy assessment, used in the recent 2020 NRAA, is exactly the same as in the previous 2017 NRAA (at least in terms of wording).⁹ In our observations of 10 May 2019, we questioned the validity of the reliability standards for example with regards to the analysis of the Value of Lost Load ("**VOLL**"). Such an analysis still misses in the current report. We remind that the reliability standard must be established in line with Articles 23(6) and 25 EMR. The current report does not comply with these requirements.

2. Implementation plan: The second step after identifying a national resource adequacy concern is to produce an implementation plan of how to address this concern mainly through resolving market failures and removing regulatory barriers (Article 20(3) EMR). We are not aware of such an implementation plan being produced by the Greek authorities before requesting the extension or renewal of the existing schemes.

3. Impact of the proposed scheme in neighbouring countries: If eventually the implementation plan fails to address the identified resource adequacy concern, a capacity mechanism may be considered. In that case, the relevant MS must carry out a study on the impact of the CM on neighbouring countries before introducing the scheme (Article 21(2) EMR). The Commission should investigate if such a study has been conducted in line with the requirements of the EMR.

4. Strategic reserves: It is clear from the wording of Article 21(3) EMR that before proceeding with any other type of capacity mechanism, the relevant MS seeks to address adequacy concerns through a strategic reserve. The Commission should examine if such option has been explored by the Greek authorities before approving the extension or renewal of the interruptibility and flexibility mechanisms.

We recall that these criteria apply to all types of capacity mechanisms including interruptibility and flexibility schemes.

⁹ See press release available at www.spef.gr/index.php/el/nea/deltia-typou/item/580-prosefyge-sto-ste-o-spef-kata-tis-diakopsimotitas

Should the Commission nonetheless find that the schemes comply with those requirements and that they are needed to address an adequacy concern (which again, is not demonstrated in the NRAA of December 2019) , we recommend that the respective decisions contain **a very strict clause subjecting the length of the prolongations, if any, to the implementation of the relevant parts of the Target Model**. In any case, we recommend that the Commission limit its authorisation to a period of maximum a year (and not for two years, as in the past).

It is equally important that generation remains excluded from the interruptibility scheme in order to avoid the use of conventional back-up generation to address scarcity situations and therefore also avoid the need to subsidise such fossil-fuelled generation (see para. 33 of the decision on SA. 48780).

Please feel free to revert should you want to discuss the above.

Yours sincerely,

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