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Observations on the proposed Greek capacity mechanism

ClientEarth

The Green Tank

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1 Introduction

1. The Commission[1] is currently assessing the compatibility with State aid rules of a new market wide capacity mechanism in Greece (hereafter the "**CM**"). It is our understanding that the file is still at pre-notification stage. However, experience shows that the Commission and the Member State authorities may already engage in discussions on the design and compatibility of a capacity mechanism scheme at this early, informal stage.[2]

2. We are therefore alerting the Commission of several critical concerns that the proposed CM raises in relation to the State aid framework, notably the Guidelines on State aid for environmental protection and energy ("**EEAG**"), the electricity market and the reduction of greenhouse gas emissions. It is important for the Commission to have regard to these concerns when considering the design and compatibility of the CM, including at both the pre-notification and informal investigation stages.

3. For the reasons set out in what follows, we urge the Commission to conduct an in-depth assessment of the State aid measure through a formal investigation procedure. Our specific concerns relate to the following topics, which we explain in more detail in the substance of this letter:

    a. **Market reforms** that could increase available resources (including, but not limited to, capacity) and flexibility of the power system are continuously and unduly delayed (Section C of this letter);

    b. The **generation adequacy assessment** performed by the Greek authorities (in 2017) appears flawed and it is questionable whether Greece faces a security of supply issue (Section D);

    c. The CM should not unduly support incumbent, **fossil fuel generation** providers to the detriment of alternative resource providers such as demand side management operators (Section E);

    d. The apparent **political agenda** of the Greek authorities to get the scheme approved before the end of 2019 to accommodate new and existing lignite-fired plants shall not drive the Commission's agenda - especially given that the proposed design of the scheme goes against the letter and spirit of the recast Regulation on the internal market for electricity (Section F).

[1] DG COMP, Directorate B, State Aid I

[2] See, for exmaple, the GB capacity mechanism (SA.35980) and the General Court's ruling annulling the Commission's decision (T-793/14, ECLI:EU:T:2018:790, Tempus Energy Ltd. and Tempus Energy Technology Ltd. / Commission, para. 85-98)

2 Contextual information

4. On 23 April 2019, the Greek Ministry of Environment and Energy launched a public consultation on the design of the CM, in order to prepare its notification to the Commission (the "**Consultation**").[3] Although we welcome the opening of a public consultation, several aspects of the process and content are criticisable. The extremely tight consultation deadline[4] and the conduct of the consultation by the Ministry and not by the competent Greek Regulatory Authority for Energy ("**RAE**") restrict the ability of market players and the public to participate effectively in the consultation.[5]

5. Even more significantly, the unavailability of the resource adequacy assessment prevents the public from commenting on the actual necessity for the proposed capacity mechanism, as well as on the assumptions underlying its design. In light of this, should this letter contain inaccuracies as to certain features of the proposed capacity mechanism, we would be grateful to be informed thereof.

6. However, the information available gives rise to clear and serious concerns regarding the Greek authorities' assessment that a CM may be required or legally justified.

7. Considering broader market developments, there has been a significant reduction in demand due to the economic situation in Greece. This has been a accompanied by a significant increase in the number of combined cycle gas turbines ("**CCGT**") built in the past decade, as well as in installed renewables capacity. Consequently, the assumptions made by the Greek authorities regarding security of supply are dubious.

8. Moreover, the CM would confer even more subsidies to fossil-fuel generation whereas some €15 billion have been spent subsidising fossil fuel electricity generation in Greece in the last 10 years[6] - paid for by Greek citizens at a time when energy poverty has increased significantly in the country. According to Greece's draft NECP,[7] approximately 30% of the Greek population is unable to suffciently heat their homes. In this context, it is essential that

[3] The new consultation is available at: http://www.ypeka.gr/Default.aspx?tabid=232&locale=el-GR&language=en-USThe previous consultation, that was organised by RAE in July 2016 on the "Basic design of the permanent capacity adequacy remuneration mechanism", is available at: http://www.rae.gr/site/categories_new/about_rae/activity/global_consultation/history_new/2016/120716.csp

[4] Similar consulations on the basic design for a capacity market in 2014 and 2016 respectively lasted approximately two months, see http://www.rae.gr/site/categories_new/about_rae/activity/global_consultation/history_new/2014/290714.csp?viewMode=normal and http://www.rae.gr/site/categories_new/about_rae/factsheets/2016/gen/1609.csp

[5] Our public participation concerns in more detail: (i) the Consultation is open from 23 April 2019 to 10 May 2019 only, which is very short especially with regard to the need and time necessary for requesting and obtaining the resource adequacy assessment from the authorities; (ii) it is organised by the Ministry of Environment and Energy whereas Article 29 of Law 4001/2011(National Gazette A' 189/22.08.2011) provides that it is the Greek Energy Regulator, RAE, who shall carry out consultations for any matter that may have a significant impact on the relevant energy market - and is thus exposed to legal challenge ; and, (iii) although the text of the Consultation is in English, it is published on a webpage that is in Greek only[5], hardly accessible for foreign market participants[5] although relevant opinions could come from, for example, stakeholders from neighbouring markets that may be affected, or stakeholders who have the experience of capacity markets in other Member States.

[6] See the report produced by WWF Greece: http://www.wwf.gr/images/pdfs/Fossil_Fuel_Subsidies_in_Greece_Final.pdf.

[7] National Energy and Climate Plan for Greece" as submitted by the Greek authorities to the European Commission (Courtesy Translation in English Provided by the Translation Services of the European Commission), January 2019, available at: https://ec.europa.eu/energy/sites/ener/files/documents/ec_courtesy_translation_el_necp.pdf

any further subsidies to Greece's thermal energy incumbents are fully justified by the strict necessities of ensuring resource adequacy.

9. Finally, as a matter of good practice, we encourage the Commission to review the generation adequacy assessment and the proposed CM as a whole in the light of the recast Regulation on the internal market for electricity (the "**recast Regulation**")[8], in particular the emission performance standard (Article 22(4)) and the rules on national adequacy assessments (Article 24). Authorising a scheme that would not already comply with the new rules, so close to the date of their entry into force, would be incoherent. In any case, the final decision shall contain a revision clause requiring Greece to make its scheme compliant, in all respects, with the new Regulation on the internal market for electricity when it enters into force.[9]

10. In light of all these factors, it is important that the Commission takes account of these observations and those submitted by other experts and market players when considering whether there are doubts as to the compatibility of the scheme with the EEAG. To ensure it has all relevant information at its disposal, and given the clear flaws in the assessment conducted to date by the Greek authorities, it is essential that the Commission opens a formal investigation procedure.[10]

3 Long-delayed market reforms shall be implemented as a priority to the CM

11. In accordance with paragraph 223 EEAG, it is for Greece to demonstrate the need for introducing a capacity mechanism. To this end, it shall "*clearly demonstrate the reasons why the market cannot be expected to deliver adequate capacity in the absence of intervention, by taking account of on-going market and technology developments*". This means that necessary market reforms must be undertaken prior to introducing a capacity mechanism.

12. Market distortions and regulatory failures are identified by RAE as the main reasons for the lack of investment signals to market participants.[11] The Greek authorities must therefore concentrate their efforts on the implementation of market reforms that have the potential to

[8] These references are based on the last version of the text available to ClientEarth, that is: P8_TA-PROV(2019)0227, Internal market for electricity ***, European Parliament legislative resolution of 26 March 2019 on the proposal for a regulation of the European Parliament and of the Council on the internal market for electricity (recast) (COM(2016)0861 – C8-0492/2016 – 2016/0379(COD))

[9] See the clause included in the decisions adopted on capacity mechanisms on 7 February 2018, on SA.48490 (footnote 26); SA.45852 (footnote 14 resulting from the corrigendum of 28 November 2018); SA.42011 (footnote 50); SA.46100 (footnote 32).

[10] It is well established that the Consultation organised in Greece cannot substitute a Commission's invitation to third parties to submit comments in the course of a formal State aid investigation. As stated by the General Court in its ruling in case T-793/14 EU:T:2018:790,"*it cannot be held […] that a national consultation [that does not relate to the matter of compatibility of a capacity mechanism with the applicable rules on State aid] can be treated in the same way as a procedure allowing the interested parties to submit their observations, as would have been the case if the Commission had initiated the formal investigation procedure*…"(para. 99-100).

[11] "*Due to regulatory failures and asymmetries in the Greek wholesale market, the existing structure and market mechanisms are unable to provide long-term financial incentives for the necessary investments and, as a result, questions arise as to the ability of market forces to support the long-term development of the required infrastructure*." page 8, section 1.3 of the consultation by the Greek TSO of 26 July 2016 on the "Basic design of the permanent capacity adequacy remuneration mechanism" available at http://www.rae.gr/site/file/categories_new/about_rae/activity/global_consultation/history_new/2016/120716?p=file&i=0

enhance security of supply (through the development of demand side response and energy efficiency measures in particular) and a market-wide capacity mechanism shall not remedy this failure.

13. It is crucial that the Commission analyses in depth the status of the reforms of the Greek electricity market. This was rightly recognised by the Commission in its recent decision approving the prolongation of the Greek interruptibility scheme, which was approved for a short period of 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*."[12] The market reforms promised at the time of introducing the interruptibility scheme have not been completed within the timeline announced to the Commission - on the contrary, they have been delayed since 2017 and they are not expected to go live before the beginning of 2020.

14. Indeed, the Greek authorities are delaying further the implementation of market reforms known as "Target Model" that would increase capacity on the market. The efforts to reform Greek energy markets consistently with the Target Model started in 2012. In its final proposal for the Greek energy market reform, RAE envisaged that the implementation of the Target Model would result in phasing out any capacity market, leaving in place only a complementary reserve mechanism operating in line with the European capacity market rules.[13]

15. The same point arises from RAE's previous (2014) proposal for the CM, which stated that the new scheme should be disconnected from market failures; such failures should be addressed through “traditional market mechanisms” like the operation of intraday, balancing, forward and day ahead markets.[14] It also emphasised that the necessity of the CM should be reviewed in parallel with the development of the Target Model in the market. This review clause was reiterated in the 2016 CM scheme, known as the "Basic Design Proposal".[15] The 2016 proposal concluded that if any CM were needed at all after the implementation of the Target Model, it should be limited to flexibility services and strategic reserves.

16. Consequently, any proposed capacity mechanism should be implemented only following implementation of the Target Model in Greece.

[12] Commission's decision on SA.48780, conclusions on page 15. See also para. 47: "*The Greek authorities have however re-confirmed their commitment to implement a functioning balancing market in which DSR can participate by August 2018, in line with Greece's commitments under the Supplementary Memorandum of Understanding between the European Commission acting on behalf of the European Stability Mechanism and the Hellenic Republic and the Bank of Greece*."
[13] Final proposals of RAE for the reform of the electricity market, page 10, available at http://www.rae.gr/site/file/categories_new/about_rae/factsheets/general/03122012_1?p=file&i=0
[14] 2014 Proposal of RAE for the reform of the capacity adequacy mechanism, page 1, available at http://www.rae.gr/site/file/system/docs/misc1/20102011/29071401
[15] See above note 12, page 9.

17. In practice, the Greek authorities have failed to follow the detailed market reform schedule agreed in the latest Supplementary Memorandum of Understanding ("**SMoU**") of 5 July 2017[16] as readjusted in the 4th review of the SMoU[17] and the Technical Memorandum of Understanding[18]; these reforms provide for the following changes:

    a. A day-ahead market ready to couple with Italy and Bulgaria in line with Regulation 2015/1222 establishing a guideline on capacity allocation and congestion management ("**CACM**"). Market participants will be able to place bids on a portfolio basis save for the conventional units that will place bids on a unit basis during a transition period;

    b. An intraday market ready to couple with Italy and Bulgaria in line with CACM regulation as part of a continuous intraday market (XBID project);

    c. An energy financial market (forward market);

    The Hellenic Energy Exchange ("**HENEX**") that was established in June 2018 will operate those three markets.

    d. A balancing market in line with Regulation 2017/2195 establishing a guideline on electricity balancing ("**EB**").

    The Greek TSO, ADMIE will operate this market.

18. All the four markets were agreed to go live initially on 1 January 2018[19], then on 1 April 2019.[20] The Greek authorities missed both deadlines and it remains unclear when the markets will start operating. The Greek Energy Regulator ("**RAE**") is still carrying out several consultations,[21] while ADMIE procured the operational software necessary for the market coupling only a few weeks ago.[22] It is almost certain that the new markets will not go live before the first quarter of 2020.

19. Finally, the importance of the operation of the Target Model for security of supply is reflected in the 2016 Basic Design Proposal.[23] The key actors of the Greek energy market (including the TSO, DSO, RAE, market participants) unanimously agree that the Target Model is one of

[16] See page 43 of the SMoU of 5 July 2017, https://ec.europa.eu/info/sites/info/files/smou_final_to_esm_2017_07_05.pdf
[17] https://ec.europa.eu/info/sites/info/files/economy-finance/draft_smou_4th_review_to_eg_2018.06.20.pdf , paged 26-27
[18] https://ec.europa.eu/info/sites/info/files/economy-finance/draft_tmu_4th_review_to_eg_2018.06.20.pdf , pages 38 - 40
[19] See page 43 of the SMoU of 5 July 2017, https://ec.europa.eu/info/sites/info/files/smou_final_to_esm_2017_07_05.pdf
[20] See above note 19, page 38
[21] http://www.rae.gr/categories_new/about_rae/activity/global_consultation/current/1004.csp
[22] http://www.admie.gr/diakiryxeis/diakiryxi/article/3611/
[23] See above note 12, page 4,

the three essential remedies needed in the Greek energy system to safeguard security of supply, the others being security of fuel supply and long-term energy planning.[24]

20. In this respect, any delay or postponement of implementation of market reforms that could have a positive impact on resource adequacy must be questioned and objectively assessed by the Commission, without simply relying on the explanations provided by the Greek authorities.

4 Major flaws in Greece's generation adequacy assessment

21. In accordance with paragraph 223 EEAG, Greece must identify the nature and causes of the generation adequacy problem and must properly analyse and quantify them, providing the unit of measure for quantification and its method for calculation. The generation adequacy assessment must be complete and fully demonstrate a resource adequacy concern in Greece and the need for the CM.

22. By contrast, a generation adequacy assessment that is incomplete and not final, such as the one that Greece submitted for the authorisation of the prolongation of the interruptibility scheme[25], is not a permissible basis for a long-term, market-wide capacity mechanism. In this respect, the Commission should verify whether Greece has, as required by the Commission in its decision of 7 February 2018, completed its former generation adequacy assessment with additional scenarios.[26]

23. A fundamental concern is that the CM has been designed prior to the establishment of a reliability standard. This is clear from p.10 of the Consultation, which states that "*The Greek authorities will set the target LOLE*". This is logically backwards - it is not possible to design an appropriate capacity mechanism until it is known what reliability standard is to be achieved.

24. As regards the 2017 **generation adequacy assessment,** its robustness is highly questionable. We are concerned about the quality of the assumptions made in the assessment. The **Annex (enclosed)** sets out our critical analysis of the 2017 assessment.

[24] IENE, report on the "Security of Supply of the Greek Energy System", July 2017, available at https://www.iene.gr/articlefiles/h%20asfalia%20tou%20ellinikou%20energeiakou%20systimatos.pdf, pages 26-28. The report is a summary of the views of RAE, ADMIE, DEDDIE and market participants presented in workshops organised by the Institute of Energy for South-East Europe in 2017; the topic of the workshop was a mild security of supply incident in Greece during the winter of 2016-2017.

[25] Commission's decision on SA.48780, para. 40 and 49

[26] Commission's decision on SA.48780, para. 39: "*However, the Greek authorities make it clear that the assessment has important shortcomings. For instance, it does not contain any extreme scenarios, such as the simultaneous occurrence of unexpected outages. Furthermore, the assessment does not assume fuel shortages in any of its scenarios. The Greek authorities have therefore instructed the TSO to add a number of scenarios to the adequacy assessment, in order to be able to understand their impact on security of supply (…)*"

Our conclusions are as follows, and may also apply to any more recent assessment submitted to the Commission as part of the present proceedings[27]:

a. The generation adequacy assessment presents a skewed, pessimistic outlook of the future. It contains assumptions and sensitivities whose credibility is highly questionable.

b. It appears that Greece has not considered in priority or even at all, the implementation of a strategic reserve.[28] As stated in the Commission's Interim and Final Reports of the Sector Inquiry on Capacity Mechanisms, strategic reserves may "*bridge a gap until market reforms are carried out*"[29]. A scheme in the form of a strategic reserve is also less distortive of competition, as the reserve is kept out of the market and therefore does not interfere with the price formation.[30] The lesser impact on the market of strategic reserves compared to market wide capacity mechanisms lead to the rule of priority provided for in Article 21(3) of the recast Regulation on the internal market for electricity. We note that the generation adequacy assessment appears to suggest that the risks to security of supply are higher in the shorter-term, which could imply that a strategic reserve is a more appropriate measure to address them.

c. At the same time, we would like to highlight that Greece is already implementing several out-of-market measures to address these concerns: a flexibility mechanism with direct payments for fossil-fuel generators, an interruptibility scheme and the proposed unlawful prolongation of the lifetime of the Amyntaio lignite plant's units.[31]

d. If no serious resource adequacy concern is proven, and absent the necessary prioritisation of market reforms mean, it would not be established that a capacity mechanism is needed in Greece. This aside, the Commission must require the Greece authorities to justify the lack of proposal regarding a less distortive scheme than the one contemplated under the pre-notification, for example, a strategic reserve.

[27] ClientEarth has not been able to obtain a copy of the generation adequacy assessment that was submitted to the Commission. However, the last generation adequacy assessment publicly available is the one of 2017 and our analysis is (partly) based on this document - see the Annex.
[28] It is noteworthy that the Supplementary MoU (5 July 2017) provides that a permanent capacity mechanism is one of Greece's obligations. However, this does not impose that the capacity mechanism be market-wide, nor that it is for a long term, and certainly not that it needs not to be limited to the extent appropriate to address the generation adequacy concern. This was prescribed for avoiding a replication of a situation similar to the one in 2017, when the capacity mechanism for flexibility expired, and flexibility services were offered beyond the expiration of the scheme and before the new scheme was adopted (it is a different question if this flexibility is needed at all).
[29] Interim report, p. 17; Final report, p. 10. See also Commission's decision of 7 February 2018 on SA.48648, Belgium - Strategic reserve, para. (124)
[30] See e.g. Commission's decision of 7 February 2018 on SA.48648, Belgium - Strategic reserve, para. (125)
[31] Amyntaio has exhausted at the end of 2018 its 17.500 allowed hours of operation under Article 33(1) of the Industrial Emissions Directive ('IED'). The Greek government has requested the European Commission to subject Amyntaio to Article 33(4) IED extending its operation to 32.000 hours. Although the European Commission rejected the request, the Greek Government extended Amyntaio's operation to 32,000 hours through a Joint Ministerial Decision (82568/11912/19-11-2018, National Gazette B' 5031/26-11-2018) breaching its IED obligations.

25. It is crucial that the Commission undertake a thorough analysis of the credibility and validity of the (more recent) assessment that we assume has been submitted by Greece to the Commission. This must include an assessment of the coherence of its assumptions (e.g. the retirement timeline and impact on security of supply of existing lignite plants) with those in other official documents, such as the draft NECP and the 2017 resource adequacy assessment prepared by ADMIE.

5 The CM should not unduly support fossil fuel generation

26. According to the Consultation (p. 10), the resources that will be eligible to participate in the scheme are dispatchable power plants, renewable energy sources ("**RES**")[32] and hydroelectric, individual or aggregated demand response ("**DSR**") meeting a 1MW bid size threshold, and interconnections.

27. We welcome the "green bonus" for storage and very low carbon technologies contemplated in the Consultation (p. 20), however, this would not be sufficient to remove doubts as to the distortions between the various technologies that the substantial differences in contracts length creates.

28. Prima facie, the participation criteria and duration of capacity agreements differ between existing and new capacity providers.[33] However, in reality, longer-term capacity agreements are available to conventional generators only, to the exclusion of DSR. DSR providers are unlikely to be in a position to anticipate their demand over such a long timeframe, and consequently the extent to which they can participate in the CM; this effectively restricts long-term capacity agreements to lignite-powered and other fossil fuel-powered plants.[34]

29. The Consultation (p. 20) provides that existing capacity will receive one-year contracts, which can be extended by one or two years in case the installation is under major refurbishment that involves either an environmental upgrade or a refurbishment necessary for the technical availability. In this respect, we emphasise that State aid such as capacity payments, used for complying with existing Union standards, such as the BAT conclusions,[35] should not be considered compatible under the EEAG (paragraphs 3, 18, 53-54). Consequently, costs associated with complying with the BAT conclusions cannot qualify as eligible costs with respect to the CM; yet the contrary is implied by the Consultation, which if correct would not be permissible.

30. Moreover, existing capacity providers undertaking capital expenditure (CAPEX) for refurbishment above a specific limit will be considered as *new* capacity providers (see

[32] RES are eligible to the proposed capacity mechanism so long as they do not cumulate State aid under other remuneration schemes.
[33] The Consultation, pp. 14 and 20
[34] See e.g. https://energypress.eu/cat-eligibility-vital-for-prospects-of-ppc-units-sale-chief-notes/
[35] The BAT conclusions for large combustion plants (which includes lignite and gas power plants) were published on 17 August 2017, and must be complied with by 17 August 2021. Available here: https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1503383091262&uri=CELEX:32017D1442.

footnote 8 of page 14) and therefore eligible for longer contracts. No figure specifying this limit is provided; we assume the levels of CAPEX applicable to new capacity would apply,[36] but this should be clarified by the Greek authorities.

31. In practice, the levels of CAPEX required to receive a 5-year or a 10-year contract are likely to be well above the level of investment that a DSR operator would normally incur. By contrast, these levels are much more likely to be met by new (or existing and refurbishing) coal and lignite-fired generators, who would then secure 10-year contracts. This leads to a number of difficulties.

    a. First, if the CM were approved in time for contracts to be granted before 31 December 2019, those carbon-intensive plants could secure contracts until 2033 regardless of their emission performances.[37] This is contrary to the objective of phasing out fossil fuel subsidies prescribed by para. 221 EEAG and the intent of the legislator when introducing an emissions performance standard for existing generators as of 2025 in the recast Regulation.

    b. Second, such a difference of contract length eligibility between DSR operators and conventional generation seriously undermines the technology neutrality of the scheme.[38]

32. It is noteworthy that in the context of the prolongation of the interruptibility scheme, the Greek authorities themselves had identified "*outages of lignite plants due to ageing and weather conditions*" as a factor contributing to resource adequacy problems in the coming years.[39] It is therefore highly questionable whether contracting capacity from historically unreliable lignite plants is an appropriate means to meet the objective of ensuring security of supply.

[36] See the Consultation, p. 20: "The contract length of new capacity providers will vary depending on the capital costs incurred for a typical investment, i.e.:
- 3 years for a CAPEX up to EUR 450/kW installed;
- 5 years for a CAPEX up to EUR 1.000/kW installed;
- 10 years for a CAPEX more than EUR 1.000/kW installed"

[37] According to the Consultation, the plan of the Greek authorities is to organise T-4 auctions. If the auctions are organised in 2019, delivery year would be in 2023. If the contracts are awarded before 31 December 2019, they would be "grandfathered" pursuant to Art. 22(5) of the recast Regulation on the internal market for electricity, meaning that 10-year contracts would run from 2023 to 2033.

[38] Analysing the difference between the length of capacity agreements under the GB capacity mechanism, the General Court considered that *"it was therefore for the Commission to investigate whether reserving capacity contracts of longer than one year to certain technologies was discriminatory and was contrary to the objective of establishing a technology neutral capacity market, thereby contravening the requirements under the Guidelines*" - See case T-793/14 of 15 November 2018, *Tempus Energy and Tempus Energy Ltd / Commission*, para. 181. This point is now formally investigated by the Commission in respect of the GB capacity mechanism

[39] Commission's decision on SA.48780, para. 42, c); para. 43: "*The Greek authorities underline that these factors are not necessarily unique to the winter of 2016/2017 and could in principle happen again in case similar weather conditions occur in the coming winters*."

6 Reliance on the "grandfathering" clause of the recast Regulation

33. The timing of adoption of this capacity mechanism is also a major concern.

34. Article 22(4)(a) of the recast Regulation on the internal market for electricity provides that "*from … [date of entry into force of this Regulation] at the latest, generation capacity that started commercial production on or after that date and that emits more than 550 g of CO2 of fossil fuel origin per kWh of electricity shall not be committed or to receive payments or commitments for future payments under a capacity mechanism*". Equally, those plants that have started commercial production earlier may not be committed or receive payments or commitments for future payments after 30 June 2025. This is "*without prejudice to commitments or contracts concluded before 31 December 2019*".[40]

35. The Greek authorities are eager for the Commission to authorise the scheme as early as possible in order to enable the future lignite-fired power plant Ptolemaida V[41], as well as the existing lignite power plants of Megalopoli A, Megalopoli B and Meliti I[42] to receive long term capacity payments. In a statement made before the Special Committee of Energy and Trade in the Greek Parliament, PPC's President publicly admitted that the operation of Ptolemaida V is not financially sustainable.

36. Allowing a Member State to bypass these new rules immediately after they have been voted for, and without an EU-level resource adequacy assessment identifying the corresponding needs, *de facto* weakens an EU Regulation that is expected to become the cornerstone of the internal electricity market in years to come.

7 Conclusion

37. The present letter is not our full analysis of the compatibility of the proposed capacity mechanism with the internal market, essentially due to the fact that essential information such as the resource adequacy assessment and the exact mechanism that was pre-notified to the Commission are not publicly available. We therefore reserve the right to follow-up with additional observations. Moreover, we have refrained from providing full, detailed comments on all aspects of the CM design as set out in the Consultation - these will instead be provided to the Greek authorities pursuant to that Consultation.

38. As regularly recalled by case law, "*The Commission may not decline to initiate the formal investigation procedure in reliance on other circumstances, such as third-party interests,*

[40] (Draft) recast Regulation on the internal electricity market, Art. 2218b(5)
[41] Ptolemaida V would not have started commercial production before the entry into force of the Regulation.
[42] Those plants are included in PPC's "divestment package".

considerations of economy of procedure or any other ground of administrative or political convenience".[43] Reliance of the Greek authorities on fossil fuel generation, to the detriment of alternative capacity providers, and willingness to continue subsiding coal in the long term despite a genuine, proven security of supply problem, is concerning, including in respect of compliance with paragraphs (43), (220) and (224) EEAG. Therefore, we encourage the Commission to assess carefully the compatibility of the proposed capacity mechanism with State aid law and, preventively, the recast Regulation on the internal market for electricity, by means of a formal investigation.

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[43] See, to that effect, judgments of 15 November 2018, Tempus Energy Ltd and Tempus Energy Technology Ltd v Commission, T-793/14, EU:T:2018:790, paragraph 63 ; of 10 February 2009, Deutsche Post and DHL International v Commission, T-388/03, EU:T:2009:30, paragraph 90 and the case-law cited, and of 10 July 2012, Smurfit Kappa Group v Commission, T-304/08, EU:T:2012:351, paragraph 78

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