



17 June 2019

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Directorate-General for Competition  
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Dear Ms Iftinchi,

### **Subject: State aid investigations regarding the Greek capacity mechanism**

Following the observations that ClientEarth submitted to your attention on 10 May 2019 in relation with the above-mentioned subject matter, we would like to bring your attention to new developments.

#### **The adoption of a capacity mechanism**

The Greek government has urgently introduced a capacity mechanism ('**CM**') by means of Article 15(5) of the freshly adopted Law 4618/2019 (National Gazette A' 89/11-6-2019). The CM was introduced as a last minute amendment to a legislative bill relating to a very different subject (bill regarding the ratification of the contracts for works V and VI in relation to the donation of the Stavros Niarchos Foundation to the Greek State for the support and upgrade of health infrastructure). The amendment was submitted to the members of the Greek Parliament in the evening of 6 June 2019 and was voted the next day. The law entered into force on 12 June, a day after its publication in the National Gazette.

The explanatory note to the bill suggests that the Greek Ministry for Environment and Energy, the Greek National Regulatory Authority ('**RAE**') and the TSO pre-notified the Commission of the CM, which was reportedly designed in line with the EEAG and the Electricity Market Regulation ('**EMR**')<sup>1</sup>. The press reported that the Commission would be aware of this development.<sup>2</sup> We nonetheless believe it is important to highlight that the legality of this scheme raises obvious legal concerns.

<sup>1</sup> Page 2, last paragraph of the explanatory notes on the amendment of the Ministry for Environment and Energy regarding "provisions for strengthening the operational independence of the Regulatory Authority for Energy and for the Long Term Capacity Remuneration Mechanism" available at <https://www.hellenicparliament.gr/UserFiles/bbb19498-1ec8-431f-82e6-023bb91713a9/11031470.pdf>

<sup>2</sup> <https://energypress.gr/news/paraskevi-i-tropologia-stathaki-sti-voyli-gia-ta-adi-teleytaia-stigma-tha-krithei-tha>

## The urgency behind the early adoption of the CM

As clearly stated by the Minister for Environment and Energy during the reading of the bill, the amendment was introduced to the Greek Parliament for reading and adoption on emergency grounds. The Minister identified this emergency as “securing rights for all the units of PPC, existing and under construction, for example Ptolemaida V” before the entry into force of EMR on 15 June<sup>3</sup>. Thus, Greece’s move to put in place the CM aims to exploit the “grandfathering clause” of the EMR (Article 22(5)) channelling money to lignite power plants, with a specific interest for Ptolemaida V which would not otherwise benefit from CMs in line with the Emissions Performance Standard (‘EPS’) provided in Article 22(4) of the EMR.

## The adopted CM

The provision of Article 15(5) amends Article 95 of Law 4001/2011<sup>4</sup> entitled “Long Term Capacity Remuneration Mechanism”. The scheme will be funded through a charge levied on suppliers.<sup>5</sup> The amended provision describes only the general framework of the CM: the suggested scheme will be a volume-based, market wide mechanism through the trading of reliability options (‘ROs’) auctioned by the TSO.<sup>6</sup> The ROs will be available to a wide range of capacity providers including domestic and foreign generation units, demand response, renewables, interconnections and storage.<sup>7</sup> However, the law does not detail the basic principles of the scheme such as the duration of the measure, the reference prices, the length of contracts etc., all of which will be determined subsequently through implementing decisions adopted by the Minister for Environment and Energy.<sup>8</sup>

Also, RAE is given powers relevant to the implementation of the CM. RAE has to adopt the CM regulation, which will set transparent and non-discriminatory rules of participation to the scheme, the obligations of capacity providers as well as penalties for non-fulfilment of their obligations. The regulation will specify further the amount of the suppliers’ charge and any other special matter pertaining to the design and the operation of the CM. RAE is also vested with the power to review the impact of the measure on the Greek electricity market after 4 years and subsequently every 2 years.<sup>9</sup>

## Standstill obligation

Under EU law, there is a risk that Greece breaches its standstill obligation should it implement the capacity mechanism before or regardless of, the outcome of the Commission’s State aid investigation. This risk may materialise given that **the amendment is not conditional upon the Commission authorising the scheme**. We encourage the

<sup>3</sup> Page 64 of 243, second and third paragraph, minutes of the Plenary, 17th Period of the Presidential Parliamentary Democracy, 4<sup>th</sup> Session 122, available at <https://www.hellenicparliament.gr/Praktika/Synedriaseis-Olomeleias?sessionRecord=a48f5b84-d7cd-40f0-b0b5-aa650125ee61>

<sup>4</sup> National Gazette A 179/22-8-2011

<sup>5</sup> Article 95(4)

<sup>6</sup> Article 95 (1),(2)

<sup>7</sup> Article 95 (3), those capacity providers can participate in the scheme provided they do not benefit from other schemes.

<sup>8</sup> Article 95(5)

<sup>9</sup> Article 95(6)

Commission to be particularly vigilant in respect of the date and conditions of entry into force and of applicability of the capacity mechanism.

It is beyond doubt that the emergency of the adoption of the CM is the accommodation of payments for the future lignite-fired power plant Ptolemaida V<sup>10</sup>, as well as the existing lignite power plants of Megalopoli A, Megalopoli B and Meliti I, which are included in the lignite package up for sale. The Minister for Environment and Energy's relevant statement on the need for the last minute adoption of the CM is recorded in the Parliament's minutes.

Moreover, we believe that the urgent approval of the CM renders void the whole purpose of the public consultation opened by the Greek authorities on the CM that closed on 10 May 2019.<sup>11;12</sup> Eventually, the CM is being adopted before the publication and analysis of the results of the consultation, making the whole procedure meaningless.

These developments only demonstrate the Greek authorities' willingness to adopt the CM as soon as possible, regardless of a strict compliance with the relevant EU and Greek law, in order to circumvent the freshly adopted EMR requirements. We therefore encourage the Commission to remain particularly vigilant and request all explanations, and relevant commitments, from the Greek authorities that would be necessary to comply with the applicable laws and principles.

Moreover, we reiterate our concerns about the compatibility of the proposed CM with the EEAG and we encourage the Commission to assess carefully the compatibility of the proposed capacity mechanism with State aid law and the recast Regulation on the internal market for electricity, by means of a formal investigation.

We remain available for discussing any further query you may have.

Yours sincerely,

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<sup>10</sup> See para. 35 of our "Observations on the proposed Greek Capacity Mechanism" of 10 May 2019; and Greece's declaration of 10 May 2019 to the Council according to which "*Based on the above mentioned assurances, it is our understanding that the lignite power plant of Ptolemais 5, currently under construction, can be included in the provisions of Article 22 par. 5 (previously Article 18b, par. 5), according to which it is possible for commitments or contracts concluded before 31 December 2019 not to be modified in order to comply with the new provisions of the Regulation on the internal market for electricity (...)*" (Interinstitutional File: 2016/0379(COD), document 8737/19 ADD 1, available at: <https://data.consilium.europa.eu/doc/document/ST-8737-2019-ADD-1/en/pdf>)

<sup>11</sup> See ClientEarth's response to the public consultation, dated 10 May 2019, at : <https://www.documents.clientearth.org/library/download-info/clientearths-response-to-the-consultation-of-the-long-term-capacity-remuneration-mechanism-in-the-greek-electricity-market/>

<sup>12</sup> See Green Tank's comments submitted on 10 May 2019 as part of the public consultation on the proposed capacity mechanism: [https://thegreentank.gr/wp-content/uploads/2019/05/Comments\\_on\\_Greek\\_CM\\_the\\_Green\\_Tank\\_final.pdf](https://thegreentank.gr/wp-content/uploads/2019/05/Comments_on_Greek_CM_the_Green_Tank_final.pdf)