times the amount of the aid received.

The Dignity Decree takes into account also State aid measures specifically conditional upon the fulfilment of productive investments in a certain national area. In this respect, the Dignity Decree states that Italian and foreign beneficiaries lose the benefit if the economic activity concerned is delocalized from the incentivized site to another area in Italy as well as in other EEA Countries, within five years from the date of completion of the subsidized investment.

The amounts of the administrative sanctions levied shall be allocated to a national fund for the financing of development plans, to the benefit of the production sites affected by relocation.

II. Employment Aid[7]

National authorities may revoke the benefit to any Italian or foreign beneficiary of employment aid operating in the national territory, which reduces, without any objective reason, by more than 50% the employment levels in the subsidized site within five years following the date of completion of the investment. If the reduction of the employment levels exceeds 10%, the benefit is reduced in proportion to the workforce cuts.

III. Hyper-amortization of Instrumental Material Assets[8]

Article 1, paragraph 9 of Law No 232/2016[9] provides for the hyper-amortization of 150% of the costs for investments in new instrumental material assets aimed to technological and digital transformation according to the Industry 4.0 model.[10]

The Dignity Decree specifies that such benefit is eligible for assets allocated to production facilities within the Italian territory. The benefit shall be recovered if, during the hyper-amortization period, the subsidized assets are transferred for a consideration or moved to production facilities located abroad, even if within the same company. In such cases, the aid is recovered by means of an increase in the taxable income of the fiscal period in which the sale or the relocation occurred, for an amount equal to the increases of the total depreciation rates deducted in previous fiscal periods, without application of penalties and interest.

The recovery does not apply if the subsidized asset transferred is duly replaced or, by its very nature, it is intended for use in more than one production site, being in such a case allowed its temporary use outside the national territory.

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7 Dignity Decree, art 6.

8 ibid art 7.

9 Law No 232 of 11 December 2016, *Bilancio di previsione dello Stato per l'anno finanziario 2017 e bilancio pluriennale per il triennio 2017-2019*, in GURI No. 297 of 21 December 2016, S.O. No. 57.

10 In this respect see Italian Government, *incentivi.gov.it – Reasoned Vademecum of Development Incentives*, available in <https://www.mise.gov.it/images/stories/documenti/WEB_INCENTIVI_ENG.pdf> visited on 23 May 2019.

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Lithuania

Recent State Aid Decisions in the Energy Sector

I. Introduction

Due to the geopolitical situation, geographical location and market structure of Lithuania supply of energy security is the major priority of its energy policy. Till 2013-2015 Lithuania entirely depended on Russian natural gas imports and was an energy island having no electricity grid connection with the rest of the EU. That explains the aims of diversification of energy mix and increase of production from local sources being at the core of the newly adopted National Energy Strategy of 2018.

Recent State aid decisions illustrate how Lithuania facilitates its national energy policy objectives. Support scheme to liquefied natur-

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al gas terminal and its operations and RES support schemes are at stake. Both invoked a number of legal disputes.

In 2015 LNG terminal was commissioned. The Commission approved State aid for the terminal, however, extensive disputes and litigation started at national and EU lever. Last year the Decision has been challenged and pending at the General Court.[1] In addition, RES Support scheme was set up in 2012 and notified to the Commission only in 2016 after a formal complaint to the Commission from market participants. The government officially presented the new RES Support scheme to stakeholders prior to the approval of the Commission.

II. RES Support Scheme – Late Approval of the Scheme set up in 2012

After a formal complaint from several market participants regarding the support to power plants producing electricity from renewable energy sources in 2016, the Commission required Lithuania to provide information and pre-notify the support.

In January 2018, following an extensive communication between the Commission, Lithuanian authorities and market participants which filed a complaint, the Commission approved Lithuanian scheme. The scheme was set up in 2012 to support producers of electricity from renewable energy sources, including wind, solar, hydro, biomass and biogas.[2] The scheme will be valid until 2029 and amount to €1,242 million. It will be financed via a levy paid by endusers.

Beneficiaries under the scheme were selected via tender procedure and granted a feed-in-premium for a period of 12 years. While small scale electricity plants, ie ones below 30 kW and, since 2013, below 10 kW received a fixed feed-in-tariff for a period of 12 years.

The Commission approved the aid, covering the difference between the production costs and the market price of electricity, granted under this scheme from 2012 to 2015, when the last beneficiary under the scheme was selected. When approving the aid, the main aspects the Commission took into consideration was that it had an incentive effect, application for the aid was before the installations started working and proportionality. The Commission concluded that the scheme was in line with the EU environmental objectives and allows supporting the development of renewable energy sources in the country and contributes to transition to low carbon energy supply.

However, that was a late notification of the aid and the scheme is applicable only for the past auctions. In December 2018, the Parliament approved the amendments of the Law on Energy from Renewables establishing a new support scheme for the development and promotion of RES.[3] The new scheme will allocate the support to new power plants by technology neutral auctions, the winner being determined by the smallest premium offered to the electricity market price in the exchange. The Ministry of Energy notified the Commission about the new scheme and plans to call the first auction for distributing the quota of 0,3 TWh in September of 2019. It most likely that indepth discussions with the Commission took place at a preliminary investigation stage, as the Decision has been already adopted and the new support scheme approved.[4]

The new scheme will be applicable from 2019 to 2025 allocating €385 million to electricity producers using renewable energy sources. Even though market participants doubt the efficiency of the requirement, only new installations could benefit from the scheme. Furthermore, beneficiaries will have more duties, eg for the first-time producers will have a balancing responsibility, if installed capacity will be more than 500 kW; also, the cost of the connection to grid will be at the expense of producers; moreover, no mandatory purchase is established, meaning that producers will have to sell electricity into market or by bilateral agreements, etc. Such conditions imply that beneficiaries will face market risks at much higher level than they are used to. Obviously, the scheme introduces a more market-based support mechanism compared to the previous one.

1 Case T-417/16 *Achemos grupe and Achema v Commission*, action brought on 28 July 2016, case pending.

2 European Commission Decision of 8 January 2019 on aid measure SA.45765 (2018/NN) granted by Lithuania to support power plants producing electricity from renewable energy sources (OJ 2019 C 61) 1.

3 The Law came into force on 1 May 2019.

4 European Commission Decision of 23 April 2019 on aid measure SA.50199 (2019/N) granted by Lithuania to support power plants producing electricity from renewable energy sources, not published yet.

III. Energy-Intensive Users Scheme

The scheme intends to grant reductions on the charge paid by energy-intensive industrial users for the financing of a mechanism supporting the electricity production from RES.[5] The compensation for 85% of the levy paid the previous year will be obtained with a condition that a company can demonstrate an electro-intensity of at least 20%.

The aid would ease the burden of RES levy, which is paid by final consumers on their electricity consumption. It is important to a number of manufacturers and fertilizer producers. According to the Lithuanian Energy Ministry over 150 companies could apply for a compensation. The budget allocated for the scheme amount to €30 million. However, the Ministry calculates that it could attract around €700 million of investment within 15 years.

The measure was assessed under the Guidelines on State aid for Environmental Protection and Energy 2014-2020. The Commission concluded that the scheme adds to the promotion of EU energy and climate goals and contributes to ensuring global competitiveness of energy-intensive users and industries. It cleared the reductions up to a certain level in contributions levied on electricity-intensive companies, if such companies are exposed to international trade and fund renewable energy support schemes.

IV. Modification of Aid for LNG Terminal

In 2013 the Commission approved a scheme to support the construction and operation of a liquefied natural gas (LNG) terminal in Lithuania.[6] The scheme established a levy on all gas users in order to make the terminal economically sound.

It was the major tool of gas supply diversification and security of supply assurance in the country. As well, in Commission's view, Lithuanian LNG terminal contributes to reaching EU's Energy Union objective to reduce energy import dependency by diversifying supply and creating a fully interconnected EU wide energy market.

In October 2018 the Commission approved notified changes to the scheme for the period from 2019 until the end of 2024.[7] There are two main changes, namely (i) public service obligation of LITGAS for supplying mandatory quantity of liquefied natural gas to the LNG terminal and (ii) removal of purchasing obligation. The assessment of the scheme was performed by the Commission under the EU State aid rules on Services of General Economic Interest.

In order to ensure security of supply, LITGAS is entrusted with the public service obligation to supply a mandatory quantity of liquefied natural gas to the LNG terminal for compensation from Lithuanian State covering its costs. That compensation is a so-called security supplement and as an additional fee is paid by all gas transmission system users.

Also, purchase obligation established by the primary scheme implied that heat and electricity generators were obliged by law to purchase a certain quantity of gas from LITGAS. In the beginning of 2019 such obligation is abolished. Thus, LITGAS will sell its gas directly on the market. The Commission welcomed the removal of the purchase obligation. That will enhance the competition in the gas market.

The financing scheme of the terminal brought various disputes, including national litigation to challenge legal acts establishing the levy, complaints for infringement of State aid, public procurement and energy law with the Commission. In 2016 initial modifications of aid for LNG Terminal has been challenged by AB Achema which filed a complaint to the Commission claiming the presence of economic advantage to LITGAS, overcompensation and violation of public procurement rules when concluding a contract with Statoil. The Commission found a violation of stand still obligation as the aid was given without timely notification and approval. However, it concluded that the aid is compatible and the allegations of the Achema's complaint are unfounded.

Achema is the largest fertilizer producer in the Baltic States, exporting around 75% of its total output, and the largest gas consumer in Lithuania, using nearly 50% of natural gas produced in the country. Thus, the company bears the

5 European Commission Decision of 8 January 2019 on the aid measure SA.50484 (2018/N) granted by Lithuania to support energy intensive users (OJ 2019 C 61) 4.

6 European Commission Decision of 20 November 2013 on the aid measure SA.36740 (2013/NN) granted by Lithuania to Klaipedos Nafta -LNG Terminal (OJ 2016 C 161) 2.

7 European Commission Decision of 31 October 2018 on the aid measure SA.44678 (2018/N) granted by Lithuania to modify aid for LNG Terminal in Lithuania (OJ 2019 C 14) 1.

highest costs of security supplement. In fact, between 2013-2017 the levy Achema had to pay amounted to €73 million, what is 39% of total LNG supplement paid by all users. That is a significant burden to the company. Worth noting, that the duty to pay the supplement was imposed to Achema even between 2013 and 2015 — a period the company did not use the terminal. Achema aims for annulment of Commission's decision of 2013 on the grounds of procedural infringements and incorrect assessment of the aid measures and wrong application of the SGEI framework at the General Court. The judgment is likely to follow this year.

V. Observations and conclusion

Lithuania already exceeded its 2020 renewable energy targets. Besides climate objectives, promotion and development of energy production from RES are one of the tools to reduce energy import dependency and increase the security of supply. Therefore, RES support schemes and the LNG terminal support mechanism are of a major national importance.

Recent State aid decisions show that Lithuania is reluctant to notify the Commission about the support. However, market participants played a role of a watch dog what made the government to be more disciplined. Furthermore, a rise of legal disputes implies that the schemes are controversial. The active voice of market participants, especially the ones which have a significant burden paying the levy from which the support schemes are financed, pushed the government to look for more market-based support instruments. New scheme of auctions, steps to modify LNG terminal support and arrangements of reductions on the charge paid by energy-intensive industrial users the efforts of Lithuania to balance between the diverse objectives in energy policy and energy market.

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Portugal

Overview of State Aid in Portugal

I. State Aid Scoreboard 2018

According to the State aid Scoreboard 2018, which presents Member States' State aid expenditure in 2017,[1] aid granting in Portugal in 2017 totalled €862.9 million, up from €751.8 million in 2016. While this increase (+15%) was more pronounced than for the EU as a whole (+9%), aid spending relative to GDP (0.39%) continued to be only around half of the EU average (0.76%).

The increment was mainly in three areas which, as in previous years, also represented the highest shares in absolute aid spending in Portugal: regional development (up 18% to €576.7 million = 67% of total aid), SME and risk capital (up 12.6% to €149 million = 17% of total) and research and development (up 8.2% to €75.3 million = 9%). These foci of Portuguese aid expenditure are reflective, on the one hand, of the structure of Portugal's industrial landscape which is dominated by SMEs (accounting for more than 99% of all enterprises) and, on the other hand, of Portugal's economic policy in recent years, which focussed on an increase of exports, of productivity and of the share of the value added in Portugal, in each case by both promoting domestic businesses and foreign investment.

At the same time, whereas in the EU as a whole, aid for environmental protection, including in particular renewable energy aid,

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1 <http://ec.europa.eu/competition/state_aid/scoreboard/state_aid_scoreboard_2018.pdf>. The Scoreboard covers all State aid – except for de minimis aid, aid to railways, aid for SGEI and crisis aid to the financial sector – as reported to the Commission by the Member States.