



31.10.2018

NOTICE TO MEMBERS

Subject: Petition No 0958/2017 by Fotios Mantanas (Greek) on serious economic issues facing the Greek Public Power Corporation (PPC)

1. Summary of petition

The petitioner, who says he is a shareholder of the PPC, complains about the Commission which he accuses of violating its obligations as guardian of the Treaties and claims that its actions and omissions in the context of the Greek fiscal adjustment programmes violate European law and European values. He specifically complains that:

- (a) in his view, there is a case of illegal State aid, because the PPC is obliged to sell energy to its consumers on the basis of its production costs while also selling energy to large industries at below cost price; he estimates the aid at about EUR 40 million annually. He states that PPC has filed two complaints in this regard to the Commission, which the latter failed to examine in substance and it also omitted to assess the cost of energy production for the PPC.
- (b) the Commission obliged the PPC to proceed with lignite energy tender procedures (NOME) with prices 35-50% lower than production and supply costs,
- (c) it failed to maintain the need for the State to pay the PPC previously recognised hidden costs of billions of euros.
- (d) it failed to press the Greek government to allow the PPC to collect consumers' debts amounting to EUR 2.5 billion.
- (e) It is pushing for the sale of PPC's lignite units within a short time, without a lower price limit and without prior assessment by an independent body; this, in his opinion, can best be described as the looting of its assets, rather than a sale at market prices.

He asks the EP to investigate the implementation of the third energy package in Greece and the Commission actions in respect of the above points, to decide on the payment of hidden costs and to protect his fundamental rights.

2. Admissibility

Declared admissible on 10 January 2018. Information requested from Commission under Rule 216(6).

3. Commission reply, received on 31 October 2018

The Commission has been in direct contact with the petitioner for a number of years following his complaint sent to the Commission in 2012 against the Greek State. In reply to the petitioner on 15 February 2018, the Commission services stated:

"As stated in our previous response, the reforms regarding the energy sector form part of the Memorandum of Understanding signed between Greece and the Commission, on behalf of the European Stability Mechanism who is providing financial support to Greece. The Memorandum of Understanding acknowledges that the Greek energy markets need wide-ranging and structural reforms to bring them in line with EU legislation and policies, make them more modern and competitive, reduce monopolistic rents and inefficiencies, promote innovation, favour a wider adoption of renewable energy and gas, and ensure the transfer of benefits of all these changes to consumers. The pillars of these reforms have been agreed at inception of the ESM Programme in August 2015 and implementation of many reforms is ongoing.

In the electricity market, many of these actions relate to Public Power Corporation, in particular the structural measures relating to lignite-fired generation capacity, in cooperation with the Directorate General for Competition of the European Commission, and the electricity auctions, as well as the adjustment related to Public Service Obligations and financial situation action plan to address the issue of arrears. This represents a holistic approach to the issues in question. Moreover, and to provide more insight into the additional comments contained in your latest letter, I trust that you have taken note that action has been taken to settle past PSO obligations towards PPC, as well as that work on the target model, both on the legislative side, as well as on the development of the codes has progressed and is now in the consultation phase with the market, which is crucial to ensure understanding and a smooth transition. Let us also note that PPC is of course free at any point to consider and take legal action when it considers it necessary; as has also been done at various instances in the past."

With regard to the specific points raised by the petitioner, the following should be noted.

The structural measures relating to lignite-fired generation capacity aim at remedying the impact on the electricity market of the privileged rights for the exploitation of lignite in Greece granted to PPC, which contribute to the current market position of PPC. In December 2016 (DEI/Commission T-169/08 REV and DEI/Commission T-421/09 REV), the European Courts confirmed that Article 106 of the Treaty on the Functioning of the European Union (TFEU) had been infringed and that measures were required to correct the anti-competitive effects identified in the infringement procedure on the granting or maintaining in force by Greece of rights in favour of PPC for extraction of lignite. Greece therefore proposed to bring a large amount of PPC's lignite-fired generation capacity under the control of other market participants by divesting two businesses. These remedies were made binding by the Commission's decision C(2018)2104 of 17 April 2018. This will ensure competition in the Greek wholesale electricity market through fair and equal access to existing lignite-fired generation which should benefit consumers and help the transition towards clean energy in

the country.

As concerns the NOME auctions and as part of the fourth review of the 3rd European Stability Programme for Greece it was agreed with the authorities that the auctions will continue but quantities to be reduced following the successful completion of the ongoing international tender by PPC for the two lignite-fired generation plants, whereas downwards adjustments of the quantities has already been made with the launch of the tender end of May. As concerns the 'reserve price' of the NOME auctions this is adopted through a Joint Ministerial Decision following a decision taken by the Regulator (RAE). It should be noted, that the actual price of the auctions is usually significantly higher than the 'reserve price'.

As concerns the arrears, as part of a so called 'prior action' under the fourth review the authorities proceeded to pay c. 25% (i.e. c. € 62 million) of the total public arrears as well as settling in July the expected total cost for 2018 for the public entities covered in the supply contract agreed between the Government and PPC, with the authorities committed to fully clear outstanding stock of public arrears by August 2018. In terms of the private arrears, PPC is undertaking a number of measures on the basis of its action plan and is regularly informing the institutions on progress made.

In November 2017 action was taken to settle past PSO obligations towards PPC. This has allowed PPC to recover revenues related to PSO obligations for the years 2012-2016, for a total amount of € 359.8 million.

Finally, as regards alleged electricity supplies to large industrial consumers, the Commission works constructively with Member States to make sure that State aid decisions involving recovery of illegal aid are enforced. If they are not, the Commission takes the necessary steps towards bringing the failure to comply with Union law to the Court of Justice of the European Union in accordance with established rules. In its role as observer at the Board of Directors of the Hellenic Corporation of Assets and Participations S.A. (HCAP), the Commission was supportive of the decision adopted by HCAP in June 2018 requesting PPC to undertake a study as concerns current pricing of high voltage users by PPC. The study is expected to be completed before end of 2018, as current pricing of high voltage users is valid till February 2019.

Conclusions

Against this background, the Commission considers that no specific action is necessary.

The Commission will continue to closely monitor the continued implementation of agreed reforms related to the energy sector following the end of the ESM programme.

On 11 July 2018, the Commission adopted a decision to activate the enhanced surveillance framework for Greece. This decision has now entered into force following the successful conclusion of the ESM stability support programme on 21 August 2018. As part of the comprehensive agreement reached in the Eurogroup statement of 22 June 2018, the Greek authorities made commitments, as set out in the annex to the Eurogroup statement¹ to

¹ <http://www.consilium.europa.eu/media/35749/z-councils-council-configurations-ecofin-eurogroup-2018-180621-specific-commitments-to-ensure-the-continuity-and-completion-of-reforms-adopted-under-the-esm->

continue the implementation of all key reforms adopted under the ESM programme and sustain their objectives, as well as to complete certain key structural reforms initiated under the ESM programme against agreed deadlines.

With a view to completing reforms in the energy sector, the agreed divestment of Public Power Corporation's lignite-fired capacity will be completed by end-2018. The Target Model will be fully launched by mid-2019, while the measures agreed as part of the joint assessment on the NOME auction system will be implemented by end-2019. Furthermore, the authorities are expected to continue to provide regular updates on the overall financial situation of PPC, including progress made in implementing the recently adopted business plan and reducing its arrears.