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Update on the regulative framework of PV development following the recent enactment of Law 4001/2011 and the revised Regulation of Electricity Generation Licences for RES plants in Greece

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Contents

I. Basic laws and regulations

The basic regulatory framework for PV plants in Greece consists of the following legislative texts:

1. The main Law 3468/2006 (Bulletin of Government Gazette A129/27.06.2006) on the generation of electric energy from RES;
2. The Law 3734/2009 (Bulletin of Government Gazette A8/28.01.2009), articles 27-27A, which set the pricing (Feed-In Tariffs) of electric energy produced by PV stations;
3. The Law 3851/2010 (Bulletin of Government Gazette A85/4.06.2010), which amended most provisions of Law 3468/2006 and Law 3734/2009 aiming at the acceleration of the licensing procedure;
4. The Law 3889/2010 (Bulletin of Government Gazette A182/14.10.2010), article 29, and the Law 3983/2011 (Bulletin of Government Gazette A144/17.06.2011), article 24, which amended certain provisions of Law 3468/2006;
5. The recent Law 4001/2011 (Bulleting of Government Gazette A179/22.08.2011), which revised the framework of the Greek energy market (electricity, gas, hydrocarbons, gas & oil pipelines, renewables, mining etc.); and
6. The recent Ministerial Decision YAPE/F1/14810 re the Regulation of Electricity Generation Licences for RES & CHP plants.

II. Main actors

Until today, in Greece there was no effective unbundling: The vertically integrated undertaking of the Public Power Corporation S.A. (PPC S.A. or "DEI AE") remains the dominant actor in all sectors of the energy market and the owner of the Grid (transmission System including most High Voltage lines and distribution Network including mostly Medium and Low Voltage lines), while the Hellenic Transmission System Operator S.A. (HTSO S.A. or "DESMIE AE") tries to balance between the functions of market operator and transmission system administrator. Various difficulties have emerged, such as delays in developing the necessary infrastructures and HTSO's inability to manage the transmission system owned by PPC (see the Explanatory Report of Law 4001/2011, p.2).

The Directive 2009/72/EC of 13 July 2009 concerning common rules for the internal market in electricity mentions that the *"rules on legal and functional unbundling as provided for in Directive 2003/54/EC have not, however, led to effective unbundling of the transmission system operators" (recital 10) and that "[o]nly the removal of the incentive for vertically integrated undertakings to discriminate against competitors as regards network access and investment can ensure effective unbundling. Ownership unbundling, which implies the appointment of the network owner as the system operator and its independence from any supply and production interests, is clearly an effective and stable way to solve the inherent conflict of interests and to ensure security of supply"* (recital 11).

Under the new Law 4001/2011, the ITO (Independent Transmission Operator) model is introduced and the setting of the main actors in the Greek Energy Market is to be radically reformed in the forthcoming months as follows:

1. The **Regulatory Authority for Energy (RAE)**, which monitors the security of energy supply, grants/ amends/ revokes the generation licences, decides on the certification of electric power companies, cooperates with the Hellenic Competition Commission to prevent anticompetitive behaviors, and in general assumes the regulatory monitoring of the energy market. To this end, RAE's powers are increased, now including further monitoring, investigation and sanction tools.

2. The **Hellenic Transmission System Administrator S.A. (HTSA S.A. or *"ADMIE AE"*)**, a new independent company to be spun off from Public Power Corporation S.A. (PPC or "DEI") within three (3) months from the entry into force of said law. Following its certification as the Independent Transmission System Administrator, HTSA assumes the operation, exploitation, maintenance and development of the Hellenic Electric Power Transmission System (HTS or "ESMIE"), pursuant to the HTS Administration Code (*"Kodikas Diaxeirisis Ellinikou Systimatos Metaforas Ilektrikis Energeias"*). HTSA acquires all necessary assets, personnel and know-how from PPC as well as most key functions from the previous Hellenic Transmission System Operator S.A. (HTSO S.A. or "DESMIE AE"). The ownership of the HTS is also transferred to HTSA from PPC. Despite being a 100% subsidiary of PPC (with profits as its main entitlement), HTSA becomes a legally and functionally unbundled entity. HTSA remains always under the direct or indirect control of the Public Sector and may get sanctioned if it discriminates in favor of the dominant vertically integrated undertaking (i.e. PPC) against other competitions. It is also explicitly provided that generation and supply undertakings are prohibited from exercising any kind of control or right over the unbundled transmission system administrators both in Greece and other EU member states (article 110Λ4 of Law 4001/2011), while the HTSA has to refrain from .
3. The **Hellenic Distribution Network Administrator S.A. (HDNA S.A. or *"DEDDIE AE"*)**, a new independent company to be spun off from PPC within eight (8) months from the entry into force of said law. HDNA assumes the operation, maintenance and development of the Hellenic Electric Power Distribution Network (HDN or "EDDIE"), pursuant to the HDN Administration Code (*"Kodikas Diaxeirisis Ellinikou Diktyou Dianomis Ilektrikis Energeias"*). HDN acquires all necessary assets, personnel and know-how from PPC, whereas PPC remains the owner of the HDN infrastructure and is granted an HDN Exclusive Ownership Licence. Despite being a 100% subsidiary of PPC (with profits as its main entitlement), HDNA becomes a legally and functionally unbundled entity, independent in terms of its organization and decision-making. Moreover, HDNA assumes the generation functions, the system administration and the market operation in Non-Interconnected Islands, being small isolated systems as defined in the Directive 2009/72/EC.
4. The **Electric Power Market Operator S.A. (EPMO S.A. or Market Operator or *"LAGIE AE"*)**, which is the existing Hellenic Transmission System Operator S.A. (HTSO S.A. or "DESMIE AE") to be renamed after assigning certain key functions to HTSA. The Market Operator is responsible – among others – for signing the respective PPAs. The Electric Power Transactions Code ("Kodikas Synallagon Ilektrikis Energeias") is the fundamental guidebook for the Market Operator's role and its interactions with other actors in the market.

The following table offers a quick outlook of the market's "restructuring" mentioned above.

	Hellenic Transmission System		Hellenic Distribution Network		Non-Interconnected Islands	
	Before	After Law 4001/2011	Before	After Law 4001/2011	Before	After Law 4001/2011
Ownership	PPC S.A. *("DEI")*	**HTSA S.A.** (PPC's 100% subsidiary)	PPC S.A.	PPC S.A.	PPC S.A.	PPC S.A.
Administration	HTSO S.A. *("DESMIE")*	**HTSA S.A.** (PPC's 100% subsidiary)	PPC S.A.	**HDNA S.A.** (PPC's 100% subsidiary)	PPC S.A.	**HDNA S.A.** (PPC's 100% subsidiary)
Market Operation	HTSO S.A.	**EPMO S.A.** *("LAGIE A.E.")*	HTSO S.A.	**EPMO S.A.**	PPC S.A.	**EPMO S.A.**

III. Brief description of the licensing procedure for PV projects >1MWp

Pursuant to Law 3468/2006 as amended and in force today, the first main licence to be obtained for PV projects with a capacity exceeding 1MWp is (a) an electricity generation licence (valid for 25 years, with a 30-month deadline to apply for an installation licence), issued by the Regulatory Authority for Energy (RAE). Following the issue of (b) the environmental terms approval (ETA) decision (valid for 10 years), (c) the forest intervention approval (if necessary) and (d) the grid connection offer (valid for 4 years), the applicant may proceed with securing the following licences and contracts: (e) the project installation licence (valid for 2 years), (f) the grid (transmission System or distribution Network) connection contract and (g) the power purchase agreement (PPA) (valid for 20 years if the plant is operational within 18 months and in some cases 36 months). Meanwhile, the investor has (h) the building permit issued as required by law and, finally, brings the PV station into operation, which requires the construction, the completion of the grid connection, commissioning and (i) a project operation licence (valid for 20 years).

We should stress that, although the statutory framework provides that certain licences are to be granted within certain prescribed time period, in practice such time periods are not always followed, on the grounds of a plethora of applications, lack of funds and subsequent investors' reduced leverage vis-à-vis the authorities, or other reasons.

The authorities had noticed that the investors were trying first to have the initial licences issued (electricity generation licence, ETA, grid connection offer) and then were trying directly to have the PPA signed and thus "lock" the Feed-In Tariff. While securing an added value for their project, they halted the remaining development process (installation licence, grid connection contract) due to the lack of funds and were looking for potential buyers. To avoid this secondary trade of licences and secure the financing of licensed projects, the recent law 4001/2011 (article 187Λ3) amended the relevant provisions, so now in order to have a PPA signed you need first to have the grid connection contract secured (requiring in turn that the complete grid connection cost is paid within a short time frame), which puts additional pressure on the investor to complete the project. In other words, now all new projects "offered for sale" with locked FIT are almost complete, missing only funding and actual construction.

Moreover, the recent law 4001/2011 (article 186Λ1) amended article 27A of Law 3734/2009 on FIT: now the reference price (FIT) is set based on the date of submission of the investor's application to sign the PPA (on the condition that the file is complete) and not on the actual date of signing the PPA. The adoption of the practice already being followed was deemed necessary since, due to the backlog, the examination of many applications was delayed and thus the investors were risking locking a lower FIT than initially estimated, due to a potential sudden change in the administrative practice.

IV. Brief description of the licensing procedure for PV projects ≤ 1MWp

To accelerate procedure for small scale projects, the law (art.4 of L.3468/2006 as amended) provides that physical persons or legal entities developing PV projects with a capacity of up to 1MWp are exempt from the obligation to obtain an electricity generation licence as well as an installation and operation licence and in some cases an ETA decision.

Pursuant to new Law 4001/2011, if the PV project in subject is exempted from the obligation to have an ETA decision issued, the grid connection offer becomes definite and binding automatically from the date of its issuance; on the contrary, if the PV project requires an ETA decision, the grid connection offer becomes definite and binding only after the issuance of the ETA decision. In both cases, the grid connection offer for small PV projects no longer has a term of 4 years, but only lasts for 6 months.

We estimate that the rationale behind this is the following: An investor does not need to apply for a generation licence and, thus, skips showing adequate funds before RAE. Therefore, the investor can address directly to PPC and secure capacity excluding others who might have better financing than him. Putting a short time period for expiry of the grid connection offer puts pressure on all investors to avoid losing time and start finding funds quickly so as to construct their PV projects.

V. The revised Regulation of Electricity Generation Licences for RES & CHP plants

A. Overview of the amendments

Following a process of public consultation, the revised Regulation of electricity generation licences for plants producing energy from renewable energy sources (RES) and combined production of heat and power (CHP) was approved by RAE and signed by the competent deputy Minister of Environment & Energy on 4 October 2011. The revised Regulation aims at (a) implementing the provisions and guidelines set forth in Laws 3851/2010 and 4001/2011, (b) reflecting the long experience of all authorities involved through the introduction of new, practical and specific provisions or amendments thereof, (c) introducing new procedures for certain types of RES.

The main provisions which alter the existing regulatory framework regarding the electricity generation licences for PV projects (hereinafter licences) are the following:

1. The procedure for submitting and publishing the licence applications is simplified;
   a. New evaluation criteria are added and existing ones are adjusted to the new legislation;
   b. RAE assumes the obligation to inform the local municipalities with the relevant applications, in order to achieve widespread publication and transparency;
   c. The criterion on the economic evaluation regarding the licence applications is amended, following the specific provisions of article 3 of Law 3851/2010 and the relevant RAE Decision no. 1179B/25.06.2010; [see below at C]
2. A specific and transparent licensing procedure for saturated networks is introduced; [see below at B]
3. The procedures for changes in the licence specifications are reviewed;
   a. The procedure for amending the licence due to changes in the licensee's shareholding structure is simplified;
   b. The procedure for notifying RAE on mere changes in the licence specifications is amended; [see below at D]
4. The procedure for renewing a licence is clarified;
5. A detailed procedure for revoking a licence is introduced; [see below at E]
6. Specific provisions for evolving technologies of renewables, such as desalination units powered by RES, solar thermal plants etc., are introduced.

Some of those new provisions are explained below:

B. Saturated networks

The market's acquired experience has shown that the declared saturation of capacity was often fictitious, since only few projects ended up operating, out of numerous projects licensed with a generation licence. To avoid this early and inefficient characterization of large areas as saturated, a detailed revision was introduced with article 8 of the revised Regulation, according to article 5Λ3a of Law 3851/2010.

RAE reviews the Administrator's relevant suggestions and defines the areas with saturated networks within the System, even at a stage prior to the ascertainment of the said saturation (article 8). The limit for secure energy absorption capacity (EAC) will now be separate for each RES technology, based on criteria including the existing at that point binding grid connection offers and the investors' interest. Unless there is an extension of the energy absorption capacity, RAE ceases to accept applications for the issuance of further licences. A more detailed procedure applies for licence applications in saturated networks of Non-Interconnected Islands (see articles 9-12).

C. Applicant/Investor's economic capacity

The applicant as well as any subsequent investor (physical person or legal entity) has to prove that he is capable of securing the financing of the project or the whole business plan, by submitting the following documents, depending on his chosen form of financing (article 13Λ2f of the revised Regulation, article 3Λ1g of Law 3851/2010). If the applicant/investor has filed applications for other projects as well or is a licence beneficiary for non-completed projects, he has to prove that his funds suffice for all the above.

1. If the applicant/investor is a legal entity and decides to develop the project through **equity capital** (thus using own funds even for a part of the project), it should submit its published financial statements (balance sheets and income statements) for the last 3 completed fiscal years, otherwise the statements for the last 2 fiscal years or certified copies thereof, accompanied with the respective auditors' reports. If the applicant has not completed 3 fiscal years, it can provide the available financial statements in addition to the shareholders' financial data. If the applicant declares that the financing will be covered by a share capital increase, then the legal documentation that proves the completion of the share capital increase or at least the shareholders' ability to complete it, has to be provided. For the evaluation of the financial statements, RAE takes into account (a) the applicant's Net Working Capital (current assets minus short-term liabilities), (b) the applicant's Reserve Capitals – beyond the statutory reserves – which are included in its net position, and (c) the applicant's participations in its affiliated undertakings – apart from those developing other projects – with a value equal to the one depicted either on their balance sheet or the audit report of a sworn auditor (element (c) is taken into account only if the applicant invokes it in order to prove its economic means).
2. In case the applicant/investor decides to develop the project (even part of it) through **bank financing**, he should submit either one of the below: (a) a statement of credit approval, describing i. the specific project or the detailed business plan; ii. the maximum amount of the loan and iii. any specific terms under which the credit approval is granted; (b) a letter of intent, describing i. the specific project or the detailed business plan, ii. the maximum amount of the loan and iii. any specific terms; (c) a letter of intent for leasing; or (d) a mandate agreement, granted for the execution of the investment plan in subject and describing the basic

terms of financing, such as the amount of the loan, its duration, the interest, the grace period and the securities provided. The above documents have to be submitted in the original or in a properly authenticated copy. If the documents submitted are issued by foreign banks, they need to be accompanied with an official translation in Greek or English.

3. In case the applicant/investor decides to develop the project (even part of it) through a **subsidy**, he should define the provisions of the respective development law in force.
4. In case the applicant/investor decides to develop the project (even part of it) through **financing by third parties**, the applicant should submit either one of the documents below: (a) Private agreement of an ascertained date, which shall include the terms and conditions of the project financing, the amount of financing and all elements mentioned below proving the availability of investment funds (from physical persons, legal entities or banks), accompanied with the approval by the applicant's lawfully representative body; or (b) private agreement of an ascertained date lawfully executed between the applicant and any venture capital funds, accompanied with the approval by the funds' lawfully representative bodies regarding the percentage and amount of participation in the investment.
5. For the evaluation of the application – only to reinforce the already submitted data – the investor may also submit (and, if submitted, RAE shall take into account) (a) certifications for i. the viability of the entire investment plan, ii. the continuity of the applicant's activities and iii. its creditworthiness, signed by independent auditors and auditing firms legally operating and registered in Greece, and (b) information from previous financing approvals by the Ministry of Development or the Ministry of Finance.

D. The amendment of the generation licence, especially due to change of the project's financiers

The licence needs not to be amended if certain specifications change. In particular, a **mere notice to RAE** is needed if, among others, there is (a) a change in the licensee's shareholding structure not exceeding 20% of the share capital, if the shareholders are the ones securing the financing, and only for once, or (b) a change in the licensee's shareholding structure irrespective of percentage, in case the shareholders are not the ones who secure the financing (article 21 of the revised Regulation).

On the other hand, the provision on the amendment of the generation licence is rephrased in a way to secure that the beneficiary continues to have adequate funds to develop the project. The investor has to **prove anew his economic capacity and have the generation licence amended**, if there is (a) a change in the physical persons or legal entities designated in the licence as securing the financing of the project, (b) a change in the licensee's shareholding structure exceeding 20% of the share capital if the previous shareholders are the ones securing the financing (articles 18-20) and (c) a transfer of the licence itself (articles 39-40). This is all part of the authorities' continuous effort to harness the unmonitored secondary market of licences (and more often of SPVs who are beneficiaries of such licences) and secure financing, so that capacity is not wasted in non-viable business ventures.

This was a point which had raised certain difficulties for prospective investors who wanted to acquire an SPV developing a PV project. In order to acquire such, at a certain point they need to have the generation licence and all other subsequent licences amended (in practice this was done after the operation licence was issued). Trying to gather all the necessary documentation for financing and business planning adds some more time in the process, but is critical for assuring that projects have adequate funding at all time. Otherwise, an investor might set up an SPV and be granted with a generation licence on the basis of the investor's own equity funds and then sell the SPV to another investor, whose funds remain unreviewed by RAE.

E. The revocation of the generation licence

Pursuant to article 42 of the revised Regulation, the electricity generation licence is revoked with RAE's decision if the licensee violates the legislative and regulatory framework as well as its general and special terms. It is revoked especially in the following cases:

1. If it is ascertained that the licensee does not proceed promptly with all necessary actions for the issuance of the installation licence and in any case within the time frame set forth in the law;
2. If it is ascertained that the licensee faces objective impediments to carry out the project or it is impossible to carry it out on time;
3. If a change in the licence specifications takes place and the criteria set forth in law do not continue to be met;
4. If the licensee ceases to exercise its activities for which the licence was granted;
5. If the issuance of the licence was based upon false or misleading information;
6. Following a written request by the licensee.

Article 43 of the revised Regulation describes the procedure for the revocation of generation licences. It is of importance to note that this stricter regime applies even for licences already granted (article 3 & 5 of Law 3983/2011), therefore, if the existing investor had ceased the development for a protracted period of time period in search of prospective buyers, he may be called before RAE to provide explanations why they did not proceed promptly with the licensing and development process.

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