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Subject: **State Aid SA. 56102 (2020/N) – Greece**
Second prolongation of the Greek Transitory Flexibility Remuneration Mechanism (TFRM)

Excellency,

1. PROCEDURE

(1) On 6 January 2020, the Greek authorities pre-notified the measure. Following pre-notification discussion, the Greek authorities notified the measure on 11 June 2020.

(2) On 15 June 2020, Greece exceptionally agrees to waive its rights deriving from Article 342 of the TFEU, in conjunction with Article 3 of Regulation 1/1958[1] and to have this Decision adopted and notified in English.

(3) A first request for information was sent on 24 June 2020 to which Greece provided a reply on 6 July 2020. Following this exchange, Greece modified the notification form and sent a new version on 9 July 2020.

(4) On 14 July 2020, the Commission services sent the Greek authorities a preliminary assessment of the information provided in the notification, based on the information which the Greek authorities had provided.

[1] Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

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(5) By letter dated 17 July 2020, the Commission sought the consent of the Greek authorities for an extension of the original period of two months within which the Commission is required to adopt a decision on the case, in accordance with Article 4(5) of Council Regulation (EU) 2015/1589. The Greek authorities accepted the extension of the deadline by email dated 22 July 2020.

2. DESCRIPTION OF THE MEASURE

2.1. Background information - The two previous TFRM schemes

(6) On 31 March 2016, the Commission adopted a non-objections decision for the first Transitory Flexibility Remuneration Mechanism[2] (TFRM). This measure consisted of a mechanism that aimed at compensating certain electricity generators in the Greek interconnected electricity system for the provision of 'flexibility services" to the Transmission System Operator (TSO). In particular, on instruction from the TSO and subject to a specified notice period, beneficiaries increased or decreased the amount of electricity injected into the electricity system at a specified minimum rate on a multi-hour time-scale.

(7) The scheme was approved for a maximum period of 12 months from its adoption, during which time the level of remuneration defined by the Greek energy regulator, RAE was 45 €/kW/year. In 2016, 28 beneficiaries received administrative payments of EUR 160 million.

(8) On 30 July 2018, the Commission adopted a non-objections decision for the second Transitory Flexibility Remuneration Mechanism (the 2018 decision)[3]. In this second scheme, subsidy were awarded following auction in exchange for availability of capacity. The measure was meant to be organised around two main delivery periods, one before the introduction of important market reforms (so-called "target model[4]") i.e. in particular the introduction of a balancing market and a second shorter delivery period after the introduction of the target model, as a bridge mechanism to allow a smooth transition towards energy-only market. However, Greece did not introduce the target model on time as foreseen in the decision (April 2020) and the second auction was cancelled.

(9) Due to further delays in the implementation of the target model, the Greek authorities asked for another prolongation of the TFRM, considering that, in the

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2 See Commission's decision SA.38968 (2015/N) Greece-Transitory Electricity Flexibility Remuneration Mechanism (FRM), OJ C 241, 1.7.2016, p. 2.

3 SA.50152 (2018/N) New Greek transitory flexibility mechanism JOCE C/406/2018.

4 Following the adoption of Directive 2009/72/EC of the European Parliament and of the Council concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ L 211, 14.8.2009, p. 556), stakeholders (regulators, TSOs, power exchanges and the Commission) have been involved in a harmonisation project, to establish a "target model" for cross-border electricity flows. The target model provides the long-term EU vision for cross-border electricity flows. In particular, the target model specifies how TSOs should calculate cross-border capacity and the main design features of coupled day-ahead and intraday markets at European level. On 4 February 2011, the European Council decided that the IEM should be implemented by 2014 and that, in cooperation with the Agency for the Cooperation of Energy Regulator (ACER), national regulators and TSOs "*should step up their work on market coupling and guidelines and on network codes applicable across European networks*" See conclusions of the European Council of 4 February 2011, EUCO 2/1/11 REV 1.

absence of changes in the market, the justification for the necessity of the measure was still valid.

(10) The design of the new TFRM is largely similar to the TFRM approved by the 2018 decision. Some changes were introduced to take into account the possibility for demand response to participate in the mechanism, which was not yet possible in 2018 (see section 2.5 of the 2018 decision). Indeed, Greece has made some modifications in its legislation, allowing demand-response to participate in the wholesale market through the submission of non-priced bids before the go-live of the target model.

(11) Similar to the TFRM approved in 2018, the mechanism will be temporary. As foreseen in the 2018 decision, it will also run in parallel with the target model to ensure a smooth transition towards energy-only market (see recital 51 of the 2018 decision). The first auction of this new mechanism took place on 14 August 2020.

2.2. Existence of market failures

(12) Two main market failures have been identified by Greece to justify the prolongation of the TFRM: (i) the recurrent need for more flexibility service due to a higher penetration of intermittent renewables and (ii) the current market design, which is deficient and will entail important design changes in the coming months.

2.2.1. Need for flexibility services

(13) Flexibility is defined in a study entitled "Long-term flexibility assessment of the Greek power system" (hereinafter the "flexibility study"), which explored and evaluated the long-term flexibility adequacy of the Greek interconnected power system for the years 2017-2027 conducted by the Greek TSO (Independent Power Transmission Operator - IPTO)[5]. It consists of "the requirement for sufficient (upward and downward) system ramping capability provided by eligible resources, in order to follow the increased net load variations under high penetration levels of variable and uncertain renewable generation".

(14) The Greek system encounters significant variability in terms of the residual or net load, i.e. the load that is covered by conventional thermal and hydro generation units. The inherent system net load variability due to total demand fluctuation is further aggravated by the significant development and penetration of intermittent renewables during the last years, as shown in Table 1 below.

(15) Greece has provided an estimate of the installed RES capacity and corresponding power generation in the interconnected system (see table below).

[5] Long-Term Flexibility Assessment of the Greek Power System, May 11, 2017.

Table 1 - Installed intermittent RES Capacity and corresponding power generation in the interconnected system – May 2020

RES Technology	Installed Capacity (MW)	Power Generation (MWh)
Wind	3.568,82	508.949
PV on ground	2.382,05	375.626
PV rooftop	351,50	40.513
TOTAL	**6.733,90**	**1.026.770**

Source: Notification

(16) Furthermore, ENTSO-E's Mid-Term Adequacy Forecast 2017 (MAF-2017) states that "a system with many renewable energy generators is more likely to experience strong ramps especially when the system size is limited and therefore abrupt weather changes apply to a large number of generators". It also provides that "It is important to acknowledge that a possible generation deficit is conceivably caused by lack of flexibility. This dimension of adequacy has to be considered when finding solutions to detected problems".

(17) Greece considers that, due to geographical conditions, the characteristics of the Greek System largely match ENTSO-E's statement regarding the effect of abrupt weather conditions on intermittent RES generation. This is further enhanced by the relatively limited interconnection capacity which, unlike the highly meshed Central European systems, reduces the overall ability of the system to cope with large changes in generation without the availability of indigenous resources.

(18) In the flexibility study, the TSO highlighted the system's needs in flexible capacity i.e. "the requirement for sufficient (upward and downward) system ramping capability provided by eligible resources in order to follow the increased net load variations under high penetration levels of variable and uncertain renewable generation". Maximum flexibility needs are in the order of 4-5GW for the short-term horizon (years 2018-2019) and increase up to 6GW in the mid-term horizon.

(19) According to Greece, there is a genuine need for ensuring that reliable supply of electricity will be available at all times by means of flexible available capacity able to tackle the short-term variability of the system residual load.

(20) According to the flexibility study, the key factor to determine the flexibility needs of the system is the maximum net system load ramp that is observed within each month. In order to account for the worst system conditions, the maximum capacity between the most severe single contingency[6] and a specific percentage of the expected peak load[7] are also added to the net system load ramp in order to calculate the *upward* flexibility needs. In the calculation of the *downward* flexibility needs, the above-mentioned term is not taken into account.

[6] The possible outage of the largest on-line thermal unit in the time interval where the maximum net system load ramp appears.

[7] To account for system load forecast errors.

(21) The flexibility study considered three distinct ramping products, i.e. 15-min, 1-hour and 3-h ramping. The study finds that net system load ramps in both directions (upwards and downwards) and for the ramping intervals of 1-h and 3-h, exhibit an increasing trend over the years. This is due to the increased net load variation in the Greek power system, as a result of the increasing system load in combination with the increasing variable RES injections, mainly produced by wind and PV plants. In quantitative terms, the maximum 1-h upward and downward net load ramps are much lower (about 30-40%) than the respective 3-h ramps. This is why the 3-h ramping needs were considered instead of the 1-h.

2.2.2. Market design inefficiencies

(22) In Greece, in accordance with Law 4001/2011 and the Greek Power Exchange Code, a day-ahead wholesale market ("mandatory pool") operates in the electricity sector. The TFRM is primarily meant to address the deficiencies of the "mandatory pool" market design. A first auction was organised by Greece in August 2020 to address the issue identified in the following paragraphs.

(23) Unit commitment depends on economic offers submitted to the pool and derives from simultaneous energy, ramping and ancillary reserve co-optimization, subject to technical constraints applicable at individual plant level, according to the declarations by plant owners. The market is cleared on an hourly basis, resulting in a system marginal price determined by the equilibrium point between the demand constraints, and the economic offer of the unit lastly accepted in the economic merit order to meet that demand. During real time system operation, the system operator re-executes the co-optimization algorithm to update unit commitment scheduling based on the latest information about plant availability, renewable generation and load forecast, considering the day-ahead plant scheduling as given. Deviations from the day-ahead program are settled using the imbalances settlement system marginal price, as no intra-day or close to real time balancing market is foreseen.

(24) Today, flexibility services are requested for system security reasons, but there is no provision for remuneration of the costs entailed. More precisely, the absence of a well-functioning, real-time market, which would address the flexibility system requirements where such products are normally traded prevent flexibility providers to be compensated for those services. Moreover, the existing ancillary services, as currently defined by the Grid Code, do not include the ramping services procured in the TFRM. Therefore, between the halt of the previous TFRM in March 2019 and the auction of August 2020, the notified flexibility service has been requested by the TSO and provided by the flexible units without remuneration.

(25) However, like any other service, providing flexibility services bears a cost. As a matter of illustration, the Greek authorities provided an extract from reports sent by the flexibility providers (both PPC and IPPs) where they declare the additional costs incurred by the provision of ramping services. This extract gives an example of a power plant that has been anonymised. The costs therefore include additional expenditures (above normal operation) needed to maintain reliable operation of the plant subject to the obligation to provide flexibility services. Greece indicated that the additional costs are also similar for the other plants providing such services.

Table 2 - Fixed Operational and Maintenance Costs including additional costs incurred for the provision of flexibility services

Description	Annual cost (000' €)	Unit cost (€/kW-yr)
Fixed O&M cost	9,350.2	23.8
Additional O&M due to increased flexibility	7,821.5	19.9
Additional gas supply and transportation cost	6,220.2	15.8
Total	**23,391.8**	**59.5**

Source: Notification

(26) Furthermore, Greece explained that flexibility providers cannot cover these costs with the revenue earned through the SMP. Several inefficiencies in the market design prevent free price formation and in particular prices to rise to levels reflecting scarcity.

(27) Greece explained that over the past years, market prices have decreased on average because of the reduction of net load driven by the increase in renewables. Therefore, the SMP hardly exceeded marginal costs of efficient gas units, which provide flexibility services. This conclusion takes into account the fact that, in some period of the last years, due to the rise in EU ETS carbon emission prices, some of the gas units in particular benefitted from market prices defined by more expensive units. It also takes into account the provision of an additional payment to those units that cannot recoup the entire fuel costs using the revenues from the wholesale market under the provisions of article 159 of the system code. Beneficiaries of the previous mechanism have provided confidential cost information on revenues earned in the market compared to the cost of providing flexibility service to demonstrate the financial gap.

(28) According to Greece, the fact that flexibility-related adequacy concerns were addressed in the past year without the TFRM does not undermine the absolute necessity of the notified mechanism because plants continued operating without changing their operation pattern because of the current provisions of articles 60 and 61 of the system code which penalise any deviation from the instructions issued by the TSO.

(29) The on-going reforms of the Greek electricity market include the set-up of the day-ahead, intra-day, forward and balancing markets, that will replace the "mandatory pool" by November 2020. To organise a smooth transition towards the new market and prevent the need for further public intervention, Greece will run an additional auction in parallel with the balancing market.

2.3. Description of the measure

(30) The TFRM will remunerate the availability of eligible capacity by a compensation in EUR/MW. The service will be centrally procured by the TSO and the level of compensation will be defined through competitive auctions organised by the TSO. These auctions will be organised according to bids offered by participants (pay-as-bid principle). The auction price will be capped at 39.000€/MWh.

2.3.1. The product

(31) The product offered in the auction consists of blocks of capacity (expressed in MW). Each block has a capacity of minimum 1 MW. Each unit can submit up to 10 blocks of capacity.

2.3.2. Monitoring

(32) Flexible units of fossil fuel technology have to confirm their availability to provide the required service on a day-to-day basis and irrespective of conditions (e.g. harsh weather conditions, fuel scarcity etc.). More specifically, they have to comply with the terms of their license regarding firm fuel availability. The above-mentioned compliance is monitored by RAE according to the provisions of Law 4001/2011 as in effect.

2.3.3. Organisation of two auctions

(33) The notified scheme has been introduced by Greece in July 2020. It will last until March 2021, i.e. when the balancing market will be mature enough in order to replace the TFRM mechanism. The Greek authorities will continue using the mechanism also after the introduction of the target model until March 2021 to allow market participants to get familiar with the new market structure. Taking into account the change that will occur in the market once the target model is in place, the Greek authorities will organise two different auction and delivery periods.

(34) The first period has a delivery period starting from the implementation of the mechanism until the end of the month following the go-live of the balancing market or no later than 31 December 2020, whichever comes first. The maximum volume of this first auction is 4500 MW. It corresponds to the mean value between the maximum requirement reported for 2018 in the TSO flexibility study (4263 MW) and the respective maximum requirement reported for 2019 (4754 MW).

(35) A second period of auction can be held, but only after the introduction of the new balancing market, with a delivery period from the end of the month following the month of the go-live of the balancing market until the 31st of March 2021. The Greek authorities have indicated that they may divide the two periods before and after the introduction of the target model into shorter delivery periods; correspondingly they may organise also more than two auctions.

(36) A temporary continuation of the TFRM in parallel with the balancing market is justified by the fact that the new market needs to be proven technically stable and that there is no experience among the market participants to allow them to estimate the prices cleared in the new market and thus, efficiently bid in the new markets. This is due to the fact that the current optimisation algorithm that derives the plant scheduling in the day ahead includes the technical constraints concerning the cyclical operation of thermal power plants, which have to be consistent with the supply of both energy and ancillary services. In addition, it remains uncertain whether structural or other circumstances will affect price formation in a way that prevents flexibility service providers to obtain a remuneration for their services, for example, in case persisting market deficiencies prevent scarcity pricing.

(37) The volume of the TFRM should be proportionate to the need to procure the flexibility necessary for the security of the system. The need of a financial support is expected to disappear once the new balancing market is operational. After the go-live of the new balancing market, the TSO, based on a methodology approved by RAE, will procure a certain amount of the maximum daily predefined range of capacities for the equivalent service (automatic frequency restoration reserve (aFRR)). As a consequence, the second auction shall cover a volume that does not exceed the total volume of this reserve (aFRR). Therefore, Greece indicated that the maximum volume for this second period of auction(s) will have a maximum volume of 1.500 MW (see also commitment in section 2.10 below).

(38) To avoid any overcompensation when the balancing market is introduced, the second auction will be followed by an ex-post monitoring mechanism to avoid over-compensation if market revenues from the new short-term markets are higher than expected (see also commitment in section 2.10 below).

(39) Since settlements will be performed ex post on a monthly basis for the TFRM and on a weekly basis for the balancing market, the claw-back mechanism foreseen in the 2018 decision will be implemented and work as follow:

For a given month m:

$R_{TFRM,m}$: Revenues from the Transitory Flexibility Remuneration Mechanism

$R_{BCM,m}$: Revenues from the Balancing Capacity Market

$R_{T,m}$: Total Revenues for flexibility and balancing capacity market

If $R_{TFRM,m} \leq R_{BCM,m}$, then $R_{T,m} = R_{BCM,m}$, else $R_{T,m} = R_{TFRM,m}$.

2.4. Legal basis

(40) The Legal Basis of the mechanism is defined in the provisions (especially Art. 143 Δ) of the amended Greek Law 4001/2011 ('Energy Law') which establishes the legal framework for the operation of the notified measure, subsequently specified in detail by Ministerial decree REF:IPEN/ΔΗΕ/66754/810 dated 09 July 2020.

2.5. Eligibility rules and Beneficiaries

(41) In order to ensure an effective competitiveness of the auction process and technological neutrality, all technologies, if technically capable, shall have the possibility to participate to the flexibility mechanism according to the eligibility characteristics, which are necessary for the stability of the system (see also commitment in section 2.10 below)

(42) Participation in the transitory mechanism is dependent upon units' firm ability to meet the technical criteria set to address the system's needs, as these are prescribed in the flexibility study. More particularly, only capacity which have proven ability of independent control by the system operator and have fast ramping features, above 8 MW/min for at least three hours ahead continuous availability, will be eligible to participate in the TFRM for the provision of flexibility services.

(43) Given the technical parameters of the flexibility services explained in section 2.2.1, only gas-fired plants, hydro units, combined heat and power units (CHP) and demand-side response are eligible to the scheme.

(44) Greece provided an estimate of the flexible capacity (minus demand response, which will be new to the mechanism):

Table 3- Net and Actual Available Flexible Capacity of different power generation technologies in the Greek Power Generation System

Power Generation Technology	Net Capacity (MW)	Actual Available Flexible Capacity (MW)
CCGT	5.065	4.622
OCGT	148	146
HPP	3.171	659
TOTAL	**8.383**	**5.427**

Source: Notification

(45) The notified scheme includes specific measures to ensure compliance with cumulation rules. Notably, units already receiving operating aid via existing feed-in tariffs will not be eligible. In particular, for the CHP unit of "Aluminion of Greece" it is established that only the capacity which exceeds the capacity under the FiT scheme[8] will be considered as "eligible capacity" for the means of the TFRM.

(46) Concerning hydro, as analysed in the context of the notification of the previous TFRM (SA.38968) hydropower units typically are fast ramping resources that can contribute to the supply of flexibility services. However, their actual availability is conditional upon scarcity of water resources and the water cycling conditions in Greece. The Greek authorities explained that there is a significant effect of restricted water sources on hydro ramping performance. In particular, the hydro units' contribution to upward system ramping shows high fluctuations compare for example to gas plants and they cannot provide flexibility services up to their technical level. In addition, nominal capacity for the participation in the TFRM would need to be adjusted in order to take into account mandatory generation, namely hydroelectricity generation, which is dispatched due to DAM management or for irrigation purposes and other uses of water and which takes the form of non-priced bids. From a system security perspective, it is imperative to take into account the reduced availability of hydro to reflect actual capacity in order not to overestimate flexibility resources available to deliver flexibility services. More particularly, water reserves present a specific seasonal cycling pattern. For this reason, Greece explained that based on the ex-post data of the

[8] FiT for CHP power plants are defined in Law 4414/2016 on a new support scheme for renewable energy sources and high-efficiency combined heat and power installations, published on 9 August 2016. The Commission approved the scheme on 16 November 2016 under State aid case SA.44666 – New operating aid scheme for the production of electricity from RES and HECHP, OJ C 83, 17.3.2017.

period from October 2018 to September 2019, it is foreseen that the eligible capacity of hydro plants in the notified TFRM will be 659MW.

(47) Greece will limit the participation of demand response to the condition that they reach a minimum volume of 3 MW.

(48) Lignite plants are not eligible to the granting of this aid because they have not sufficient ramping-up capability. The same goes for intermittent renewable capacity. Additionally, the secondary regulatory framework for the development and participation of storage in the market is currently under development. The legal framework does not allow for the participation of storage in this temporary measure.

(49) Furthermore, Greece explained that due to objective, technical restrictions, participating plants will be located in Greece and interconnected to the Greek System, as the nature of the needed service and the designed mechanism requires the ability of the units to follow orders from the Greek TSO when instructed to do so, as well as the ability of the latter to control the performance and compliance with such orders. In light of the current absence of market coupling between the Greek market and neighbouring markets and the absence of bilateral agreements between TSOs for sharing flexibility resources, the participation of plants located outside Greece would not be possible before the introduction of the target model and the subsequent market coupling. However, Greece commits to the full implementation of market coupling in the context of the target model and hence committed to allow for participation of foreign capacity to the TFRM auction following the introduction of the target model, if market coupling with the neighbouring Member States is in place by then and provided that the interconnector technology and the agreed procedures with neighbouring TSOs can meet the TFRM characteristics/requirements (see also commitment in section 2.10 below).

(50) Greece explained that a relevant provision will be foreseen stipulating explicitly that in the framework of the auction and in case of identical offers, the offer of the lower-carbon intensive provider will prevail.

(51) Beneficiaries of the aid will be selected through auctions.

2.6. Penalties

(52) The penalties will be the same as in the previous flexibility mechanism. For each of the flexibility characteristics required by the mechanism, namely (a) to follow the dispatch order within three hours, (b) to ramp with at least 8MW/minutes and (c) to provide flexibility for the duration of the instruction (maximum three hours), the penalties calculation is performed using different factors: F1, F2 and F3 (described in recitals (53) and (54) below). The total penalty can range from 10% to 100% of the final compensation of each flexible provider, depending on the severity of the non-compliance and the duration of the non-compliance.

(53) Factor F1 represents the failure to comply with a dispatch instruction issued by the TSO. This factor reflects the number of cases where the flexibility provider did not adequately comply with the above instruction. Factor F2 is related to the ramping rate. Each flexibility provider must respect the ramping rate of 8MW/min and the rate declared in their Technical Characteristics for its

participation in the electricity market. Factor F3: represents the failure to deliver the capacity obligation for the duration of the instruction (maximum three hours) and it reflects the number of consecutive hours in which he is required to follow a fast ramping cycle and the period of time that he did not respond adequately.

(54) Following the determination of the above three parameters, a total factor $\boldsymbol{F}$ is calculated. It acts basically as a total rate for non-compliance penalties. It is calculated from the weighted sum of the three factors F1, F2 and F3 with the performance gravity parameters in accordance with the formula below and it is expressed as a percentage:

$$\boldsymbol{F = FLX_{AFS} * F1 + FLX_{AFR} * F2 + FLX_{AF_L} * F3}$$

- $\boldsymbol{FLX_{AFS}}$*: the parameter of gravity for the non-compliance to follow the dispatch order within three hours. It is set at 1,2.*
- $\boldsymbol{FLX_{AFR}}$*: the gravity parameter for the non-compliance to ramp with at least 8MW/minutes. It is set at 0,8.*
- $\boldsymbol{FLX_{AF_L}}$*: the parameter of gravity for the non-compliance to provide flexibility for the duration of the instruction (maximum three hours). It is set at 1.*

2.7. Financing of the measure

(55) The measure will be financed by a special charge, imposed on load representatives (electricity suppliers) depending on their maximum electricity demand measured during hours with increased loss of load probability (LOLP) as explicitly provided in article 300 of the system code.

(56) The TSO will be responsible for (a) calculating the payments awarded under the measure, (b) issuing the settlements and (c) performing the respective invoicing. The TSO shall invoice the load representatives (electricity suppliers) to collect the funds for the payments in question in the context of a special account.

2.8. Budget

(57) The overall cost of the measure will depend on the auctions' results. Greece provided an estimation of EUR 73 million taking into account the price cap, the total volume and the duration of the measure.

2.9. Duration

(58) The overall effective duration of the scheme will be until 31.03.2021. More specifically, the TSO will launch at least one auction with a delivery period lasting until the end of the month following the month of the go-live of the balancing market or no later than 31 December 2020, whichever comes first. The TSO can organise at least one other auction with a delivery period beginning from the end of the month following the month of the go-live of the balancing market with a duration period up to the 31st of March 2021.

2.10. Commitments

(59) Greece agreed to include a number of modifications to the notified measure, which are the following:

(a) According to Greece, the TFRM compensates the beneficiaries for the flexibility services they provide and which are not appropriately remunerated in the current market design. Its duration and design should therefore be geared towards bridging the gap with the introduction of the new balancing market. As a consequence, the TFRM can be deployed before the new balancing market is introduced. In view of Greece's objective to introduce the new electricity markets (including the new balancing market) as soon as possible and not later than November 2020, the TFRM's first auction can be organised with a delivery period lasting until the end of the month following the go-live of the balancing market or no later than 31 December 2020, whichever comes first.

(b) In case it is proved necessary to organise a second auction to allow for the availability of back-up flexibility while the balancing market becomes operational, a second auction might be held after the introduction of the new balancing market, with a delivery period beginning from the end of the month following the month of the go-live of the balancing market up to the 31st of March 2021.

(c) The volume of the TFRM should be proportionate to the need to procure the flexibility necessary for the security of the system. The need of a financial support is expected to disappear once the new balancing market is operational. After the go-live of the new balancing market, the TSO, based on a methodology approved by RAE, will procure a certain amount of the maximum daily predefined range of capacities for the equivalent service (automatic frequency restoration reserve (aFRR)). As a consequence, the second auction shall cover a volume that does not exceed the total volume of this reserve (aFRR).

(d) In order to avoid overcompensation the TFRM should contain a claw-back mechanism. For the second auction, Greece commits to keep the same claw back mechanism described in decision SA. 50152.

(e) In order to ensure an effective competitiveness of the auction process and technological neutrality all technologies, if technically capable, shall have the possibility to participate to the flexibility mechanism according to the eligibility characteristics, which are necessary for the stability of the system.

(f) Greece also commits to ensure full participation of cross-border capacity to the second auction of the TFRM and the balancing market following the introduction of the target model, if market coupling with the neighbouring Member States is in place by then and provided that the interconnector technology and the agreed procedures with neighbouring TSOs can meet the TFRM characteristics/requirements.

2.11. Cumulation

(60) The aid granted through the TFRM cannot be cumulated with any other type of aid related to the same eligible costs.

2.12. Transparency

(61) Greece commits to observe the transparency requirements, set out in points 104-106 of the Guidelines on State aid for environmental protection and energy 2014-2020[9], with its subsequent amendments and prolongation[10] ("EEAG"). The full text of the European Commission decision granting authorization and the Ministerial decision implementing the new TFRM will be published on the Ministry's and ADMIE's website as soon as the relevant decisions are issued. In addition, within 6 months from the auction's date, further information will be published on the State aid website[11] regarding the identity of the individual beneficiaries, the form and amount of aid granted to each beneficiary, the date of granting, the type of undertaking, the region in which the beneficiary is located (at NUTS level II) and the principal economic sector in which the beneficiary has its activities (at NACE group level). Such information will be kept for 10 years and will be available to the general public without restrictions.

2.13. Firms in difficulty or subject to an outstanding recovery order

(62) The Greek authorities confirm that no aid can be granted to undertakings in difficulty, in line with point (16) of the EEAG, or to undertakings subject to an outstanding recovery order following a previous Commission decision declaring aid illegal and incompatible with the internal market. Greece submits that undertakings which were not in difficulty on 31 December 2019 but became undertakings in difficulty in the period from 1 January 2020 to 30 June 2021, will be able to participate in the TFRM, in line with the amended EEAG (see footnote 10)[12].

3. ASSESSMENT OF THE MEASURE

3.1. State aid within the meaning of Article 107(1) TFEU;

(63) Article 107(1) of the Treaty defines State aid as 'any aid granted by a Member State or through State resources in any form whatsoever'.

(64) State aid falling within Article 107(1) of the Treaty is incompatible with the internal market if it 'distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods […], in so far as it affects trade between Member States.

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9 OJ C 200, 28.6.2014, p. 1.

10 On 2 July 2020, the Commission adopted a communication prolonging and amending the EEAG. See Communication from the Commission C/2020/4355 concerning the prolongation and the amendments of the Guidelines on Regional State Aid for 2014-2020, Guidelines on State Aid to Promote Risk Finance Investments, Guidelines on State Aid for Environmental Protection and Energy 2014-2020, Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty, Communication on the Criteria for the Analysis of the Compatibility with the Internal Market of State Aid to Promote the Execution of Important Projects of Common European Interest, Communication from the Commission – Framework for State aid for research and development and innovation and Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance, OJ C 224, 8.7.2020, p. 2.

11 www.admie.gr.

12 In point (16) of the amended EEAG, the following sentence has been added: '*These Guidelines shall, however, apply to undertakings which were not in difficulty on 31 December 2019 but became undertakings in difficulty in the period from 1 January 2020 to 30 June 2021*.'

(65) Paragraphs 2 and 3 of Article 107 of the Treaty list specific circumstances in which aid is or may nonetheless be considered compatible with the internal market.

3.1.1. Imputability to the State and financing through State resources

(66) For measures to qualify as State aid within the meaning of Article 107(1) of the Treaty, they have to be (a) imputable to the State and (b) granted directly or indirectly through State resources, meaning granted directly by the State or granted by a public or private body designated or established by the State[13].

(67) As explained in section 2.7, the State has established, through the System Operating Code, a special levy in order to finance compensation to flexibility providers. The measure is therefore imputable to the State.

(68) Furthermore, the State has entrusted the TSO with the tasks of centralising and administering all financial flows related to flexibility service compensation and invoicing the suppliers to collect the funds for the payments in question in the context of a special account. The level of the levy will be determined by the TSO, a State owned company. Consequently, the Commission takes the view that the TFRM is financed from State resources since it is financed from the proceeds of a para-fiscal levy imposed by the State and those resources are managed and apportioned by the TSO in accordance with the provisions of the legislation.[14].

3.1.2. Economic advantage conferred on certain undertakings or the production of certain goods (selective advantage)

(69) An advantage, within the meaning of Article 107(1) TFEU, is any economic benefit, which an undertaking would not have obtained under normal market conditions, i.e. in the absence of State intervention[15].

(70) The notified measure will allow beneficiaries to receive an additional compensation which they would otherwise not obtain in the Greek electricity market. The notified measure will confer an advantage on certain undertakings in one sector of the economy (electricity production). Those undertakings are the flexible capacity installations identified by the TSO as being able to provide the flexibility service.

(71) The notified measure will thus confer an economic advantage to undertakings that are in a comparable factual and legal situation to other electricity producers that are not eligible to participate in the TFRM in the sense that the latter will not be paid in exchange for offering their availability to the TSO.

(72) Moreover, the measure confers an advantage also to only certain undertakings within the flexible capacity installations. As explained in section 2.5 above,

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[13] Case 76/78 Steinike & Weinlig v Germany [1977] ECR 595, paragraph 21; Case C-379/98 PreussenElektra [2001] ECR I-2099, paragraph 58; Case C-706/17 Achema [2019] paragraphs 47 and following.

[14] See case C- 405/16 P, Germany v European Commission [2019] ECLI:EU:C:2019:268, paragraphs 68; case C-706/17 Achema and Others [2019] ECLI:EU:C:2019:407, paragraph 57 and case T-217/17 FVE Holýšov I and Others v Commission [2019] ECLI:EU:T:2019:633, paragraph 111.

[15] Judgment of the Court of Justice of 11 July 1996, SFEI and Others, C-39/94, ECLI:EU:C:1996:285, paragraph 60; Judgment of the Court of Justice of 29 April 1999, Spain v Commission, C-342/96, ECLI:EU:C:1999:210, paragraph 41.

during the first period of the mechanism, before the implementation of the target model, some flexible capacity, in particular cross-border capacity will be de facto excluded from the mechanism. Additionally, demand response participating in the interruptibility scheme is not eligible to participate in the mechanism.

(73) Therefore, the TFRM confers a selective advantage.

3.1.3. Distortion of competition and trade within the EU

(74) The measure risks distorting competition and affecting trade within the internal market. Electricity generation as well as electricity wholesale and retail markets are activities open to competition throughout the Union[16]. Therefore, any advantage from State resources to any undertaking in that sector has the potential to affect intra Union trade and to distort competition.

3.1.4. Conclusion on the assessment under Article 107(1) of the Treaty

(75) In the light of the above assessment, the Commission concludes that the measure constitutes State aid within the meaning of Article 107(1) TFEU.

3.2. Compatibility with the internal market

(76) Article 107(1) TFEU lays down the principle that State aid which distorts or threatens to distort competition, in so far as it affects trade between Member States, is prohibited. In certain cases, however, State aid may be compatible with the internal market under Articles 107(2) and (3) TFEU.

(77) On the basis of Article 107(3)(c) TFEU, the Commission may consider compatible with the internal market State aid to facilitate the development of certain economic activities within the European Union, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

(78) The Commission has assessed the compatibility of the measure with the internal market, on the basis of the conditions established in Section 3.9 of the EEAG, which set specific conditions for aid to generation adequacy, applicable since 1 July 2014until 31 December 2021[17].

(79) To assess whether the TFRM can be considered compatible with the internal market, the Commission assesses whether the design of the measure meets the following criteria listed in the EEAG[18]:

(a) contribution to a clearly defined objective of common interest (Section 3.2.1 below);

(b) need for State intervention (Section 3.2.2 below);

(c) appropriateness (Section 3.2.3 below);

(d) incentive effect (Section 3.2.4 below);

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16 See notably Regulation (EC) n°714/2009, Directive 2009/72/EC, Regulation (EU) n°2019/943 and Directive (EU) 2019/944.

17 See recital (42) and footnotes 9 and 10.

18 See in particular paragraph (27) and Sections 3.9.1 to 3.9.6 of the EEAG.

(e) proportionality (Section 3.2.5below);

(f) avoidance of undue negative effects on competition and trade (Section 3.2.6 below);

(g) transparency of the aid (Section 3.2.7 below)

3.2.1. Objective of common interest

(80) As stated in recital (30) of the EEAG, the primary objective of aid in the energy sector is to ensure a competitive, sustainable and secure energy system in a well-functioning Union energy market. Paragraphs (219) to (221) of the EEAG define more specific criteria on how Member States should define the common interest objective for measures in the field of generation adequacy.

(81) Paragraph (219) determines that measures for generation adequacy can be designed in a variety of ways and can be aimed to address both short term flexibility concerns and long term concerns about the ability to meet a generation adequacy target.

(82) The notified measure aims at ensuring that flexible capacity is available to provide the level of flexibility required in the Greek electric system. It addresses a market deficiency whereby flexible capacity are not remunerated for providing flexibility services to the TSO. At the same time the need for flexibility increases in Greece due to an increasing penetration of renewable energy. The measure will ensure that flexibility services essential to the security of the system are correctly remunerated.

(83) Paragraph (220) of the EEAG explains that aid for generation adequacy may contradict the objective of phasing out environmentally harmful subsidies and that alternative ways for achieving generation adequacy without these negative environmental impacts should be considered primarily. It suggests that alternative ways could be the facilitation of demand side management and the increase of interconnection capacity.

(84) Given the technical parameters of the flexibility service, high carbon intensity generation lignite plants are excluded from this measure due to their technical features. The measure will be beneficial towards low-carbon technology such as hydro and demand response. Furthermore, in case of identical offers, the offer of the lower-carbon intensive provider will prevail (see recital (50)).

(85) Paragraph (221) EEAG underlines the need to clearly define the objective at which the measure is aimed, including when and where the adequacy problems are expected to arise. It also requires the conclusions of the generation adequacy assessment to be in line with the analysis carried out periodically by ENTSO-E.

(86) Non-dispatchable renewable generation which is variable and to an extent unpredictable has been increasing in the Greek energy mix. This results in increased ramping requirements in order to effectively respond to the net system load variations and keep the power system balanced and secure. In this context, ensuring security of supply requires developing more flexibility in the system.

(87) This requirement identified in the flexibility study of the Greek TSO, is consistent with the analysis conducted by ENTSO-E[19]. In the Mid-term Adequacy Forecast (MAF) 2017, it is stated that: "*Due to developments in the energy generation mix – more fluctuating renewables and less conventional fossil generation – the need of a more sophisticated assessment is necessary. With increase of renewables in the system the most critical situations may occur in future at times other than peak demand, for instance when the load is low and the in-feed of renewables is high. In addition to the assessment of whether the generation meets the demand, downward regulation and the need for more flexibility in the system share the centre of attention*".

(88) In the flexibility study presented by Greece, the TSO identified and quantified the necessary level of flexibility to ensure security of the system. The flexibility study of the Greek TSO (see Section 2.2.1) determines the system flexibility needs for each month of the year. Both upward and downward flexibility needs are calculated for 1-h and 3-h ramping intervals. On this basis they determined the appropriate level of capacity to be contracted in the mechanism.

(89) On this basis, it can be concluded that the capacity mechanism contributes to a well-defined objective of common interest.

3.2.2. Need for State intervention

(90) As a general principle, in order to demonstrate the need for State intervention it needs to be established that a market failure exists that prevents market forces from achieving generation adequacy and thus risks undermining the objective of security of supply. Paragraphs (222) to (224) of the EEAG define more specific criteria of how Member States should demonstrate the need for State intervention.

(91) Paragraph (222) of the EEAG requires a proper analysis and quantification of the generation adequacy problem, while paragraph (223) of the EEAG requires a demonstration of the reasons why the market cannot be expected to deliver adequate capacity. Paragraph (224) of the EEAG requires the Commission to take account of various assessments to be provided by the Member State, relating to the impact of variable generation, demand side participation, interconnection and any other element causing or exacerbating the generation adequacy problem.

(92) The Greek authorities demonstrated the impact of the increasing share of variable generation on the Greek electricity system and in particular the greater need for flexible capacity (see section 2.2.1). Its system has in increasing need for these flexibility services. The flexibility study presented by the TSO shows that flexibility in power generation is necessary for the system security and operational reliability, due to the increasing penetration of variable RES and the evolution of consumption profiles. The conclusion of the study is in line with ENTSO-E's conclusion on the growing necessity of flexibility services for the security of the system (see recital (16)).

(93) The increase of intermittent renewables in the Greek market has created more uncertainty in the day-ahead market (see recital (27)). It has become more important to improve short-term markets to enable balancing responsible parties to balance their portfolios on the shorter term intraday and balancing markets, but

[19] ENTSO-E, Mid-term Adequacy Forecast 2017.

also to foster the development of ancillary services that can respond in ever shorter timeframes to system disturbances. Flexibility services are typically offered in balancing markets.

(94) However, as explained in section 2.1, the Greek electricity market does not have a functioning balancing market at the moment. As a result, the costs occurring by the provision of flexibility services cannot be remunerated by the system marginal price. The Commission finds that Greece has shown that in the current market design, flexible capacities are not properly compensated when providing these services, due to the absence of real-time balancing market. Greece has further explained that this conclusion takes all revenues into account (see recital (27). Beneficiaries from the previous TFRM have provided cost information to the Commission showing that during the period without the TFRM in place they occurred important financial losses (see recital (27)). The Commission finds that preventing capacity from earning appropriate revenues put the security of the system at risk as it may undermine their incentive to stay in the market.

(95) It should be noted that, during the period when no flexibility mechanism was in place, the gas-fired power plants continued their operation without changing their operation pattern despite being not adequately remunerated, because the current legislation penalises any deviation from the TSO instructions (see recital (28)). Nevertheless, obliging flexible units to provide unremunerated flexibility services would entail a serious risk of such units eventually exiting the Greek electricity market. Although such unremunerated obligation through penalisation can serve in the very short-term as an emergency solution, it is not a sustainable (even in the short-term) mechanism for ensuring flexibility in the system.

(96) The above elements justify the necessity to prolong the TFRM absent the balancing market. As explained in recital (29) it appears difficult to predict how market participants will adapt to the new market design. Therefore, as per the 2018 decision, the Commission deemed necessary to allow for a transition period where the TFRM will run in parallel with the balancing market.

3.2.3. Appropriateness of the aid

(97) Generation adequacy concerns should first and foremost be addressed by reforming the electricity market so as to provide the incentives for capacity providers to become or remain active on the energy-only market and deliver security of supply at lowest possible costs.

(98) The implementation of the intraday and, especially, the balancing market, amongst other pillars of the target model, will gradually replace the need for public intervention to ensure adequate flexible capacity, as it is expected to rectify those failures, which currently require the introduction of an interim/“bridge” mechanism, to be ended in March 2021.

(99) Furthermore, in order to be found appropriate in accordance with Section 3.9.3 of the EEAG, the measure should meet several conditions: i) the aid must only compensate the service of availability of capacity; ii) the measure should be open and provide adequate incentives to both existing and future generators and to operators using substitutable technologies, and iii) take into account the extent to which interconnected capacity can contribute to remedy the generation adequacy concerns.

(100) As explained in recital (30) above, the mechanism will only remunerate the service of availability of flexible capacity.

(101) Because the measure is targeted at solving flexibility issues in the Greek electricity system identified in Section 2.2.1, only plants with flexible capacity are allowed to participate in the mechanism as they are the only capacity able to provide the service as technically defined by the TSO. Therefore, exclusion from the measure is purely based on technical parameters.

(102) As explained in recital (46) above, the actual availability of hydro units is conditional upon scarcity of water resources and the water cycling conditions in Greece. The Greek authorities explained that there is a significant effect of restricted water sources on hydro ramping performance. In particular, the hydro units contribution to upward system ramping shows high fluctuations compare for example to gas plants and they cannot provide flexibility services up to their technical level. In addition, nominal capacity for the participation in the TFRM would need to be adjusted in order to take into account mandatory generation, namely hydroelectricity generation, which is dispatched due to DAM management or for irrigation purposes and other uses of water and which takes the form of non-priced bids. Therefore, the nominal capacity of hydro units is rightly adjusted for those factors in order to reflect the actual capacity of such units. Not overestimating the capacity that a flexible unit can realistically provide to the system is very important from a system security perspective. Therefore, based on ex-post data of the period from October 2018 to September 2019, the eligible capacity of hydro plants in the TFRM was appropriately adjusted to 659MW.

(103) Moreover, as explained in recital (10) Greece has started developing the legal framework allowing for the participation of demand response. This participation will still be limited but improves the openness of the measure and is deemed appropriate for a short-term and temporary measure.

(104) The measure is technically open to new and existing capacity but does not provide specific incentive for new capacity, which is deemed acceptable considering that it will be phased-out in March 2021.

(105) On interconnection, the Greek authorities explained that the participation of foreign capacity would require a fully coordinated capacity commitment on a broad area that relies on strong inter-TSO co-ordination, operation market coupling and flow-based allocation of sufficiently sized interconnectors. These conditions are not fulfilled at present. However, it should be pointed out that Greece commits to ensure full participation of cross-border capacity to the second auction of the TFRM and the balancing market if market coupling with the neighbouring Member States is in place by then and provided that the interconnector technology and the agreed procedures with neighbouring TSOs can meet the TFRM characteristics/requirements.

(106) For these reasons, the Commission considers that the measure is appropriate as required by Section 3.9.3 of the EEAG.

3.2.4. Incentive effect

(107) A State aid measure has an incentive effect if it changes the behaviour of the undertakings concerned in such a way that they engage in activities which they would not carry out without the aid or which they would carry out in a restricted or different manner. The EEAG has laid down more specific guidance as to the interpretation of this criterion in Section 3.2.4, namely that the measure should induce the beneficiary of the aid to change its behaviour to improve the functioning of a secure, affordable and sustainable energy market, a change in behaviour which it would not undertake without the aid.

(108) As explained above (see Section 2.2.2), the way the Greek market functions today does not provide specific remuneration for providing flexible services. Yet, because flexible plants can provide the flexibility services identified by the TSO, they are deemed necessary for a secure energy market. It follows that in the absence of the measure, the financial sustainability of flexible capacity would deteriorate, and therefore there is a high risk that flexible plants would exit the Greek market, which would then put at risk the security of the system.

(109) With respect to the second auction period, because Greece does not have (prior to the target model) short-term markets, it is difficult to predict how the system will technically work and whether market participants will quickly adapt so that price formation will function correctly, as explained in recital (29). Since at this stage there is a risk that flexible capacity might still not be adequately remunerated in the initial period of application of the target model, the risk for the financial sustainability identified in recital (108) for flexible capacity and its potential negative outcome for security of supply justifies State aid through the second auction for a transitional period.

(110) In addition, the presence of penalties (see Section 2.6) ensures the required service is actually delivered.

(111) Thus, the measure has an incentive effect as required by section 3.9.4 of the EEAG.

3.2.5. Proportionality

(112) The aid amount is proportionate if it is limited to the minimum needed to achieve the objective pursued. The EEAG specifies this requirement for generation adequacy measures in paragraphs (228) to (231). Paragraphs (228) and (230) provide that beneficiaries should earn a rate of return that is reasonable and that windfall profits should be prevented. Paragraph (229) states that this can be ensured by a competitive bidding process based on clear, transparent and non-discriminatory rules. According to paragraph (231), the price paid for availability shall automatically tend to zero when the level of capacity supplied is expected to be adequate to the level of capacity demanded.

(113) An auction process is applied to select the capacity providers of the measure. The measure is transparent and based on clear rules available to all participants in advance of the auction.

(114) The maximum volume of capacity that can participate in the mechanism has been defined according to the system needs as explained in section 2.3.3. The volume

of capacity that is eligible for the mechanism is greater than the maximum volume of capacity to be selected (see Table 1). Therefore, not all bidders can receive aid. This appears to ensure competitive tension in the bidding process and can be expected to lead to a market-based remuneration of the flexibility services.

(115) In the first TFRM, the compensation for flexibility services was around 46.4 €/kW/year. For the TFRM approved by the 2018 decision, the Greek authorities have set in the auction a price cap of EUR 39,000/MW to avoid any risk of over-compensation. The Greek authorities have submitted new data showing that these costs, which were based on gas-fired power plants, have not significantly changed (see Table 2). Therefore, the Commission finds that the price cap will limit overcompensation.

(116) The proposed TFRM will run in parallel with the target model markets from November 2020 to March 2021, where flexible capacity revenue is expected to increase. In order to avoid overcompensation, the mechanism will be divided in two delivery periods, with at least two separate auctions. For the second period, an ex-post claw-back mechanism will be established as explained in recitals (38) and (39). The Commission takes the view that this claw-back mechanism will avoid any risk of overcompensation when the target model will be in place. Furthermore, no price floor is provided and flexible capacity providers may submit zero priced offers. Therefore, the Commission finds that the measure will avoid overcompensation also for the second auction.

(117) The notified measure also includes measures to ensure compliance with cumulation rules. In particular, for the CHP unit of "Aluminion of Greece" it is established that only the capacity which exceeds the capacity under the FiT scheme will be considered as "eligible capacity" for the means of the TFRM.

(118) With regard to the requirement of point (231) EEAG, the Commission notes that based on the competitive design of the auction, the price is expected to tend to zero when the level of capacity supplied is expected to be adequate to meet the level of capacity demanded.

(119) The remuneration received by the selected capacity providers can therefore be considered proportionate.

3.2.6. Avoidance of negative effects on competition and trade

(120) According to Section 3.9.6 of the EEAG, the measure should not result in undue distortion of competition and trade. In particular, the measure must meet the following conditions: i) when technically and physically possible, be open to all capacity providers subject to meeting the proportionality principle; ii) avoid negative effects on the internal market, for example due to export restrictions, wholesale price caps or bidding restrictions; iii) not reduce the incentives to invest in interconnectors and not undermine market coupling; iv) not undermine investment decisions that preceded the introduction of the measure; v) not unduly strengthen market dominance and vi) give preference to low-carbon technologies in case of equivalent technical and economic parameters.

(121) Paragraph (232) (a) to (c) of the EEAG underlines the importance of ensuring competitive pressure in selecting the capacities through a sufficiently broad participation and wide eligibility criteria.

(122) As explained in Section 2.5, all the flexible capacity able to provide the service as defined by the TSO can participate. Exclusion of cross-border capacity is considered justified for the first period of this bridge and time-limited mechanism.

(123) The measure does not undermine investments in existing gas and eligible hydro generation since these are eligible to participate in the measure. The measure does not affect the return on investments in RES, which are determined by the levels of other support measures. For lignite and the remainder of hydro capacity, considering that the measure will only remunerate availability, the mechanism will not reduce the SMP, from which these generators derive their revenues. Hence, investment decisions in lignite and hydro will not be undermined.

(124) Fourth, the measure does not unduly strengthen market dominance, as it will benefit both the dominant player PPC and the Independent power producers.

(125) For these reasons, the Commission considers that the measure does not result in undue distortion of competition and trade.

3.2.7. Transparency of the aid and firms in difficulty or subject to an outstanding recovery order

(126) The Greek authorities commit to observe the transparency requirements, set out in paragraphs (104) to (106) of the EEAG. The full text of the European Commission decision granting authorization and RAE's decision implementing the new flexibility scheme will be published on RAE's website as soon as the relevant decisions are issued. In addition, within 6 months, further information will be published regarding the identity of the individual beneficiaries, the form and amount of aid granted to each beneficiary, the date of granting, the type of undertaking, the region in which the beneficiary is located (at NUTS level II) and the principal economic sector in which the beneficiary has its activities (at NACE group level). Such information will be kept for 10 years and will be available to the general public without restrictions.

(127) As explained in section 2.13 above, the Greek authorities confirm that no aid can be granted to undertakings in difficulty. The Commission notes that Greece intends to allow undertakings which were not in difficulty on 31 December 2019 but became undertakings in difficulty in the period from 1 January 2020 to 30 June 2021 to participate in the TFRM, in line with the amended EEAG (see recital (62)). The Commission therefore considers that the scheme is in line with point (16) of the EEAG. Besides, the Greek authorities confirm that no aid can be granted to undertakings subject to an outstanding recovery order following a previous Commission decision declaring aid illegal and incompatible with the internal market. The Commission therefore considers that the scheme is in line with point (17) of the EEAG.

3.2.8. Conclusion on compatibility with the EEAG

(128) The Commission therefore finds that the aid scheme is compatible with the criteria set out in the EEAG.

3.3. Compliance of the aid measure with intrinsically linked provisions of Union law

(129) If a State aid measure (including its method of financing, if hypothecated to that aid) entails aspects which are indissolubly linked to the object of the aid and which breach other provisions of Union law, such a breach could affect the assessment of compatibility of that State aid[20].

3.3.1. Compliance with Article 30 and 110 TFEU

(130) In the field of energy, any levy that has the aim of financing a State aid measure needs to comply in particular with Articles 30 and 110 TFEU. As explained in Section 2.7 above, the payments will be financed by a levy imposed on all electricity suppliers.

(131) With regard to Article 30 and 110 TFEU, it is settled case-law that in its present state of development, Union law does not restrict the freedom of each Member State to establish a tax system which differentiates between certain products, even products which are similar within the meaning of the first paragraph of Article 110 TFEU, on the basis of objective criteria, such as the nature of the raw materials used or the production processes employed. Such differentiation is compatible with Union law, however, only if it pursues objectives which are themselves compatible with the requirements of Union law, and if the detailed rules are such as to avoid any form of discrimination, direct or indirect, against imports from other Member States or any form of protection of competing domestic products[21].

(132) A discriminatory treatment against imports from other Member States presupposes that similar situations are treated differently. The Commission has therefore assessed whether imports are in a similar situation to the national production. As explained in section 2.5 above, Greece will allow the participation of foreign capacities to the second auction of the mechanism, once the necessary reforms allowing for such a participation will be in place.

(133) In the light of the above, the Commission reaches the conclusion that the financing mechanism of the notified aid measures does not introduce any restrictions that would infringe Article 30 or Article 110 TFEU.

3.3.2. Compliance with the regulation (EU) 2019/943 on the internal market for electricity

(134) In the present case, the Commission needs to verify whether the provisions of regulation (EU) 2019/943 on the internal market for electricity ("electricity regulation") concerning capacity mechanisms might be breached by aspects of the TFRM and, in the affirmative, whether such aspects would be indissolubly linked to the object of the aid under the TFRM. If both those questions were answered in the affirmative, such breach would affect the compatibility assessment of the TFRM as State aid.

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[20] See recital (25) of the Commission Decision in State aid SA.40029 (2014/N) "Reintroduction of the winding-up scheme, compensation scheme, Model I and Model II – H1 2015", OJ C 136, 24.4.2015, p.4. See recital (29) of Commission Decision in State aid SA.42215 (2015/N) "Prolongation of the Greek financial support measures (art. 2 law 3723/2008)", OJ C 277, 21.8.2015, p.11.

[21] Case C-213/96 Outokumpu [1998] I-1777, paragraph 30.

(135) The electricity regulation defines capacity mechanisms as follows: *"'capacity mechanism' means a temporary measure to ensure the achievement of the necessary level of resource adequacy by remunerating resources for their availability, excluding measures relating to ancillary services or congestion management;"*.

(136) Ancillary services are defined in Article 2(48) of directive (EU) 2019/944 on the internal market for electricity ("the electricity directive") as follows: *"ancillary service means a service necessary for the operation of a transmission or distribution system, including balancing and non-frequency ancillary services, but not including congestion management"*.

(137) Currently the Greek electricity system is an exception in the EU in that it is the last one not having any separate operational balancing market. In that context, the Greek Transitory Flexibility Remuneration Mechanism (TFRM) can be seen as relating to ancillary services, since the TFRM serves as a substitute for a remuneration mechanism that a functioning balancing market could provide to the owners of power plants providing flexibility to the TSO in line with EU law.

(138) It is to be noted that such a mechanism would cease to have a reason to exist after the go-live of the Greek balancing market. From that date, the power plants providing flexibility to the TSO will be able to monetise this flexibility service through this market. Nevertheless, that will happen once the Greek balancing market will operate in a stable manner with fully adapted participants. Therefore, in order to ensure that the new market functions properly from a technical point of view but also that all market participants, in particular small ones, get used to the operation of the new market, a short transitional period and a second auction is in line with the EU rules under the conditions of this decision.

(139) In the event that once the balancing market is in place and the transitional period has elapsed, the remuneration provided to the owners of flexible power plants is not considered to be adequate, this shall be tackled by the necessary adjustments in the rules of the balancing market and not through a renewal of the TFRM.

(140) Therefore, the Commission concludes that the TFRM does not breach the electricity regulation.

(141) Therefore, for the purpose of the present assessment of compatibility of the TRFM based on State aid rules, the Commission concludes that the TFRM does not entail aspects indissolubly linked to the object of the aid that would breach other provisions of Union law.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union

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Your request should be sent electronically to the following address:

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Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President