

DECISIONS

COMMISSION DECISION

of 14 August 2014

granting the Hellenic Republic a derogation from certain provisions of Directive 2009/72/EC of the European Parliament and of the Council

(notified under document C(2014) 5902)

(2014/536/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (⁽¹⁾), and in particular Article 44(1) and Article 48 thereof,

Having regard to the applications by the Hellenic Republic of 17 January 2012 and of 5 December 2003,

After informing the Member States of this application,

Whereas:

1. PROCEDURE

- (1) On 17 January 2012, the Greek Ministry of Environment, Energy and Climate Change ('YPEKA') submitted an application (the 'application') to the Commission, pursuant to Article 44(1) of Directive 2009/72/EC for a derogation from Chapters III and VIII of Directive 2009/72/EC for certain Greek islands that are not interconnected to the electricity system of mainland Greece (the non-interconnected islands or 'NIIs').
- (2) On 12 September 2012, the Commission requested the Greek Regulatory Authority for Energy ('RAE') to comment on the application. RAE responded to this request on 16 November 2012 (the 'RAE opinion').
- (3) RAE made further submissions to substantiate the application on 17 December 2013, 23 December 2013, 4 February 2014, 28 February 2014 and 17 March 2014.
- (4) On 14 March 2014 (with an addendum sent on 20 March 2014), the Commission informed the Member States of the application in accordance with Article 44(1) of Directive 2009/72/EC, with a request to submit observations, if necessary, by 25 March 2014. No observations were submitted.
- (5) With its application YPEKA renewed the request submitted by the Ministry of Development on 5 December 2003 in accordance with Article 26(1) of Directive 2003/54/EC of the European Parliament and of the Council (⁽²⁾) (the 'initial application') for a derogation from certain provisions of Directive 2003/54/EC. Although preliminary steps were taken to investigate the initial application, the derogation pursuant to Article 26(1) of Directive 2003/54/EC was neither granted nor refused.

⁽¹⁾ OJ L 211, 14.8.2009, p. 55.

⁽²⁾ Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC (OJ L 176, 15.7.2003, p. 37).

2. THE APPLICATION SUBMITTED BY YPEKA

2.1. SCOPE OF THE REQUESTED DEROGATION

- (6) The application requests derogation from Chapters III and VIII of Directive 2009/72/EC.
- (7) Chapter III of Directive 2009/72/EC refers to the authorisation procedure and tendering for new capacity. Chapter VIII refers to third party access, market opening and direct lines.

2.2. CURRENT ORGANISATION OF THE ELECTRICAL SYSTEM ON THE NIIs

- (8) The Greek energy markets are primarily governed by Greek Law 4001/2011 which transposes Directive 2009/72/EC. Law 4001/2011 has entered into force on 22 August 2011.
- (9) DEDDIE SA ('DEDDIE') is the Greek distribution system operator, which is 100 % owned by, but legally and functionally unbundled from, the Public Power Corporation ('PPC'), the incumbent Greek electricity producer and supplier. The network assets operated by DEDDIE are owned by PPC.
- (10) Pursuant to Article 127 of Law 4001/2011, DEDDIE is responsible for developing, operating and maintaining the Greek electricity distribution system, which includes the electricity distribution system on the NIIs.
- (11) In addition, DEDDIE is responsible for operating the electricity systems on the NIIs. These tasks include: (i) the preparation of a generation development plan for micro isolated systems, including a programme to interconnect them with other NIIs (ii) ensuring that the necessary sites are available to install new production capacity, to extend existing capacity or delivery components and to expand the Greek electricity distribution system to non-interconnected islands and micro isolated systems (iii) entering into contracts with licence holders governing deliveries of electricity to and from the system, the provision of ancillary services to the distribution systems of NIIs and the remuneration of the producers of electricity, of charges to customers and suppliers for the electricity delivered to them and of other credits and debits on the special accounts, such as those for remunerating public service obligations.

(12) Article 137(1) of Law 4001/2011 stipulates that all electricity consumers shall be classified as eligible customers, with the exception of consumers established in micro isolated networks, subject to Article 139 of the same law.

(13) Pursuant to Article 133(3) of Law 4001/2011:

'With the exception of cases in which electricity is produced using renewable energy sources or by high-efficiency cogeneration or hybrid plants and in the case of auto producers, if a derogation has been granted in accordance with the provisions of Article 139, a generation licence shall only be granted to PPC SA in accordance with certain licensing regulations. PPC SA shall be responsible for the uninterrupted supply to micro isolated systems for which it obtains a licence and for safeguarding the long-term financial operation of the electricity systems on those islands.'

(14) Pursuant to Article 134 Law 4001/2011:

'Without prejudice to the provisions of Article 139 of the present law, supply licences for micro isolated networks shall be granted solely to PPC SA in accordance with the requirements of the Licensing Regulations. PPC SA must supply non-eligible customers with electricity on request.'

- (15) According to Article 139 of Law 4001/2011 derogations from the provisions of Law 4001/2011 may be granted in accordance with the provisions of Article 44 of Directive 2009/72/EC.
- (16) The Ministerial Decision no PD5/EL/B/F IB/12924 adopted pursuant to Article 28 of Greek Law 3426/2005, establishes that the supply of electricity to consumers in NIIs by any electricity producer constitutes a public service obligation ('the NII PSO') in the general economic interest. On the grounds of social cohesion, electricity suppliers in the NII must supply electricity at a price equal, per category of consumer, to those on the Greek interconnected system.

- (17) Article 52 of Greek Law 4001/2011 stipulates that customers on non-interconnected islands are entitled to special services both in terms of price and in terms of quality and security of supply as well as transparency of contractual terms and conditions. Providers of the NII PSO receive, in return for discharging the PSO, a financial compensation calculated on the basis of a methodology established by RAE Decision 24/2014/EC⁽¹⁾. This methodology is based on the difference between the full production costs on the non-interconnected islands (variable and fixed) and the full market price suppliers are facing in the interconnected system (system marginal costs plus all other mechanisms in the Greek interconnected system). The NII PSO compensation is calculated on a monthly basis and per autonomous island system, and is subject to control by RAE. The NII PSO compensation is raised through a levy on all customers, including those on the NIIs⁽²⁾. The NII PSO mechanism is administered by LAGIE, the Greek state-owned market operator. Ministerial Decision D5-EL/B/F1/oik.27547 of December 2011⁽³⁾, based on the provisions of Article 55(3) of Law 4001/2011, established that the NII PSO is to be offered by all suppliers, therefore all suppliers are eligible for NII PSO compensation.
- (18) Secondary legislation regulates more in detail the supply and production of electricity on the NII. In particular, by its decision No 39/2014 of 28 January 2014, RAE adopted the Code of Management of Electric Power Systems on the Non-Interconnected Islands (the 'NII Code') which regulates many issues with respect to the operation of the isolated systems on the NIIs, including market opening, market settlement and electricity production. The NII Code entered into force on the day of its publication, i.e. 17 February 2014.

2.3. SUBSTANTIAL PROBLEMS FOR THE OPERATION OF ISOLATED SYSTEMS

- (19) The application highlights the following problems for the operation of the Greek isolated electricity systems:
- (a) the large variation in electricity demand in micro isolated systems, accentuated by:(i) the tourism aspect of the economic development of the islands; and (ii) the increased penetration of Renewable Energy Sources ('RES').
Those factors negatively affect both the load factor of thermal or conventional generation capacity and the possibility to recover costs from investments in such generation capacity;
 - (b) the large variation in weather conditions on the islands which affects demand and causes malfunctions of the generation systems, and as a result requires extensive reserves.
- (20) The application highlights the following problems for the development of conventional generation on the Greek small isolated electricity systems:
- (a) the difficulties or even impossibility to find suitable sites for new conventional generating stations in the micro isolated systems, primarily due to public resistance;
 - (b) the small size of the NIIs that gives rise to large reversals in the long-term development planning of thermal production due to unforeseeable investments by electricity consumers (such as large tourist complexes or craft facilities) which requires expediency and flexibility in the response to electricity demand;
 - (c) electricity demand in the NII isolated systems is expected to increase by 2 % per year until 2017. Although the authorisations have been granted to PPC for the installation of the additional required capacity and its installation has already been scheduled (which is expected to cover the demand of all NIIs, along with the necessary reserve margins, by 2017), it has not always been possible to comply with the time schedule;
 - (d) the small load size, large variations in load and increased RES penetration in most micro isolated systems limits the available technological solutions for conventional generation, restricting the choice to small generating installations fuelled with heavy oil of low content in sulphur or with light oil;

⁽¹⁾ Government Gazette 270/B/7.2.2014.

⁽²⁾ Article 36 Law 4067/2012 has shifted the burden of covering the extra costs from suppliers to consumers. According to this Article, the system applies pending the attribution of the PSO in accordance with Article 55 Law 4001/2011 and following the conclusion of the NII code pursuant to Article 130 of Law 4001/2011.

⁽³⁾ Government Gazette 2783/B/2.12.2011.

- (e) the procedures for the procurement of new power generation are time consuming. Two and a half to three years pass from the time authorisation is granted until the power generators enter into service;
 - (f) the development of plans to construct interconnectors between the Greek interconnected system and the micro isolated systems on the NIIs undermines the interest for investing in conventional generation capacity on the NIIs. Interconnection projects with the Cyclades and Crete are scheduled.
- (21) As a result, resort has to be taken on a regular basis to emergency solutions, such as the rental of mobile diesel-fuelled power generators or gas turbines. The need for case-by-case authorisation for emergency generation needs is undesirable as it gives rise to the uneconomical renting of equipment instead of purchasing. The application provides several examples where unforeseen events gave rise to the longer term use of mobile power generators.
- (22) The application highlights the following problems for the market opening on the isolated electricity systems on the NIIs:
- (a) in order to allow for market opening, specific infrastructure will need to be developed and installed in the isolated systems on the NIIs. This infrastructure entails the installation of control centres to manage: (i) the daily scheduling of generation; and (ii) the market settlement in each isolated system by repartitioning the production cost in each isolated system to the suppliers active therein.
- The necessary infrastructure is costly and the cost is borne by consumers;
- (b) due to the NII PSO, electricity retail prices are the same for each consumer category throughout the Greek territory. The higher production cost in the NIIs, as compared to the production cost in the interconnected system, must therefore be recovered from suppliers active in the NIIs by repartitioning the respective part of the PSO compensation as a function of the electricity sales to their customers.
- It is claimed that the large variation in the values of the average annual variable production cost per NII would render the settlement mechanism for the market complicated.
- (23) Consequently, YPEKA takes the view that developing the necessary infrastructure for the operation and supervision of the electricity market in conjunction with market opening on the isolated systems on the NIIs entails costs that outweigh the benefits that may accrue to consumers from market opening.
- (24) The application does not contain a date by which the requested derogation would expire.
- ### 3. THE RAE OPINION
- #### 3.1. SCOPE OF THE DEROGATION
- ##### 3.1.1. Derogation from Chapter III of Directive 2009/72/EC
- (25) RAE takes the view that the derogation from Chapter III, in accordance with Article 44(1), should not concern the installation of new power capacity that can be developed in an isolated system, but **only** the refurbishing, upgrading or expanding of the existing production capacity. Existing generation capacity consists of the power plants that already operate or are under construction on the NIIs. Any new power plant that will be installed on those islands is considered new generation capacity.
- (26) RAE notes that independent power producers ('IPPs') (i.e. other than PPC) have demonstrated a strong interest for developing RES and cogeneration power plants in all micro isolated systems during the last two decades. Consequently, third-party access to the power systems of all NIIs concerning RES and combined heat and power ('CHP') development should not be restricted.
- (27) RAE states that it does not oppose granting a derogation for the activation of new conventional power plants, provided certain conditions are met. However, Article 44(1) of Directive 2009/72/EC does not provide for the possibility of derogation for new capacity.

- (28) RAE deems that capacity expansion of existing conventional plants concerns mainly a short-term lack of capacity in the NIIs arising from unexpected damages on existing capacity or delayed installation of new capacity, especially during high-demand periods (e.g. summer peaks). These expansions are subject to an open tendering procedure according to Article 8 of Directive 2009/72/EC. Such a procedure is time-consuming and not suited to the urgent nature of emergency situations.
- (29) RAE accepts that PPC, should cover any such emergency situations. Taking into account that PPC is able to move mobile conventional units from islands in which there is a capacity surplus to those with a capacity deficit, this solution might also be the most economical one.
- (30) RAE stresses that any derogation must allow specifying the appropriate licensing procedure for emergency case situations, and, specifically, which of the criteria mentioned in Article 7 of Directive 2009/72/EC must be examined by the competent licensing authorities.
- (31) RAE deems that derogation should be granted with a limited duration such as a maximum of 10 years.

3.1.2. Derogation from Chapter VIII of the Directive

- (32) According to RAE, the supply of electricity in the NIIs is connected in practical terms to the NII PSO and the NII PSO compensation because (i) the cost of electricity generation in the NIIs is significantly higher than that in the mainland and (ii) the Greek State requires a uniform pricing, per customer category, throughout its territory.
- (33) The NII Code foresees the installation of certain metering and recording equipment on the NIIs for hourly measuring, energy management and control centres, monitoring and related IT systems. RAE maintains that this infrastructure is indispensable for:
- (a) ensuring that the PSO costs are transparent, non-discriminatory and can be verified;
 - (b) the proper operation and sound management of the electrical systems themselves so as to achieve the most economical operation mode and, therefore, a larger reduction of NII PSO charges for electricity consumers;
 - (c) accomplishing a higher RES and cogeneration penetration, including RES technologies with complex and special requirements for their management, such as RES with storage, solar-thermal plants, etc.;
 - (d) guaranteeing the necessary transparency in the management of the isolated systems, thereby ensuring non-discriminatory treatment of all market participants, in particular producers.
- (34) RAE consequently argues that, regardless as to whether one or more suppliers are licensed to be active within a micro isolated system, this infrastructure must be installed in the isolated systems on the NIIs.
- (35) The estimated cost for installing this infrastructure is not expected to exceed EURO 20 to 30 million for all NIIs, including Crete and Rhodes. RAE deems this amount reasonable, especially when considering the expected benefits i.e. securing transparency and verification of the NII PSO as well as the sound and controlled operation of the isolated electricity systems.
- (36) Contrary to YPEKA, RAE takes the view that licensing more than one supplier to be active in a given isolated system on the NIIs will not entail substantial additional cost of the infrastructure required as the same infrastructure is in any event already necessary for the daily scheduling of NII located generation units, market settlement and for providing for the NII PSO.
- (37) Furthermore, RAE deems that additional significant benefits for NII consumers exist in allowing more than a single supplier to be active.
- (38) Consequently, RAE takes the view that the permanent exclusion of alternative suppliers in NII markets is not warranted. The installation of the necessary infrastructure as described above is expected to be completed in a time period of three to five years. RAE would not oppose a possible derogation strictly for this time-period, without any further extension.
- (39) RAE further notes that in case the status of any isolated system on the NIIs changes so that it no longer falls into the category of small or micro isolated systems, the derogation should automatically cease to apply. This could arise where the isolated systems on the NIIs are interconnected with the Greek interconnected system.

4. ASSESSMENT

4.1. LEGAL BASIS OF THE APPLICATION

- (40) Article 44(1) of Directive 2009/72/EC provides for the possibility to derogate from certain provisions of the Directive, where the derogation applies to small isolated systems and micro isolated systems.
- (41) According to Article 2(26) of Directive 2009/72/EC, a small isolated system is any system with consumption of less than 3 000 GWh in the year 1996, where less than 5 % of annual consumption is obtained through interconnection with other systems.'
- (42) According to Article 2(27) of Directive 2009/72/EC a micro isolated system is any system with consumption less than 500 GWh in the year 1996, where there is no connection with other systems.
- (43) The isolated systems identified in the application consist of one and, occasionally, several NIIs (see columns 1 and 2 of the Table). Even if an isolated system consists of several NIIs that are interconnected between them, the electricity system constituted by those interconnected NIIs is isolated, in the sense that it is not connected to any other electricity system.
- (44) The application claims that 31 of the 32 isolated systems are micro isolated systems, the largest of which is Rhodes. The micro isolated systems for which the application has been made represented 5,24 % of the total sales of electricity in Greece in 2010. The isolated system of Crete is considered a small isolated system. Crete represented in 2010 3,01 % of Greek electricity demand.

Annual demand by Isolated System

Name of IS	NIIs that are part of the IS	Annual demand (MWh)				Annual demand in 1996	
		1996	2003	2010	2013	< 3 000 GWh	< 500 GWh
Crete		1 562 300	2 444 543	3 014 392	2 825 132	Yes	No
Rhodes	Rhodes Chalki	386 630	650 115	764 401	760 658	Yes	Yes
Kos-Kalymnos	Kos Kalymnos Lipsi Leros Nisyros-Giali Tilos Telendos Pserimos	156 340	281 574	351 959	352 984	Yes	Yes
Lesvos	Lesvos	153 650	259 552	308 454	288 230	Yes	Yes
Chios	Chios Psara Oinousses	110 480	180 868	214 449	200 042	Yes	Yes
Paros	Paros Antiparos Naxos Iraklia Koufonisia Schinousa Ios Sikinos Folegandros	95 340	164 761	208 206	194 740	Yes	Yes

Name of IS	NIIs that are part of the IS	Annual demand (MWh)				Annual demand in 1996	
		1996	2003	2010	2013	< 3 000 GWh	< 500 GWh
Samos	Samos Fournoi Thymena	90 170	136 283	151 017	137 315	Yes	Yes
Syros	Syros	56 920	100 429	107 270	95 302	Yes	Yes
Thira	Thira Thirasia	47 680	88 073	117 957	120 199	Yes	Yes
Mykonos-Dilos	Mykonos-Dilos	45 740	78 049	115 071	112 978	Yes	Yes
Limnos	Limnos	35 650	55 340	62 710	59 672	Yes	Yes
Karpathos	Karpathos Kasos	26 580	30 397	37 829	36 931	Yes	Yes
Milos	Milos Kimolos	15 460	37 331	45 819	45 402	Yes	Yes
Ikaria	Ikaria	13 110	24 359	28 845	27 613	Yes	Yes
Skyros	Skyros	9 380	14 053	16 150	14 782	Yes	Yes
Patmos	Patmos	8 770	13 988	16 738	17 020	Yes	Yes
Sifnos	Sifnos	6 540	13 180	17 966	16 521	Yes	Yes
Symi	Symi	5 250	9 819	15 054	14 662	Yes	Yes
Amorgos	Amorgos	3 840	7 284	9 816	9 072	Yes	Yes
Kythnos	Kythnos	3 610	7 089	8 309	7 991	Yes	Yes
Serifos	Serifos	2 830	6 793	8 162	7 654	Yes	Yes
Astypalea	Astypalea	2 470	5 283	6 997	6 670	Yes	Yes
Megisti	Megisti	770	1 863	2 751	3 005	Yes	Yes
Ag. Efstratios	Ag. Efstratios	540	937	1 058	1 075	Yes	Yes
Anafi	Anafi	400	858	1 110	1 179	Yes	Yes
Othoni	Othoni	330	588	674	632	Yes	Yes
Erikousa	Erikousa	220	452	710	746	Yes	Yes
Agathonisi	Agathonisi	190	388	522	642	Yes	Yes
Donousa	Donousa	180	417	676	690	Yes	Yes

Name of IS	NIIs that are part of the IS	Annual demand (MWh)				Annual demand in 1996	
		1996	2003	2010	2013	< 3 000 GWh	< 500 GWh
Aktikithyra	Aktikithyra	70	199	228	241	Yes	Yes
Arkii-Marathi	Arkii-Marathi	0	175	248	312	Yes	Yes
Gavdos	Gavdos	0	0	365	471	Yes	Yes

(45) The table above contains the isolated systems as identified in the application and provides certain information on each of them. From this information it can be derived that all isolated systems, except Crete, had in 1996 an electricity demand that qualifies them as micro isolated systems within the meaning of Article 2(27) of Directive 2009/72/EC. With regard to Crete it needs to be mentioned in addition that, as Crete was and still is not interconnected to any other electricity system, the percentage share of demand satisfied through interconnectors was and still is zero, i.e. lower than 5 %. Crete is thus a small isolated system within the meaning of Article 2(26) of Directive 2009/72/EC.

(46) The RAE opinion did not comment on the isolated systems identified in the application.

(47) The Commission thus concludes that isolated systems as identified in column 1 of above table are all micro isolated systems within the meaning of Article 2(27) of Directive 2009/72/EC, except for Crete, which is a small isolated system within the meaning of Article 2(26) of Directive 2009/72/EC.

4.2. SUBSTANTIAL PROBLEMS FOR THE OPERATION OF CONVENTIONAL POWER PLANTS IN THE MICRO ISOLATED SYSTEMS

(48) The Commission considers that substantial problems for the operation of conventional power plants in the micro isolated systems exist. This is due in particular to the following elements:

(a) The size of the load that needs to be served on the islands does not allow for larger, more efficient and cost effective conventional power plants to be installed, also because in order for an isolated system to be able to operate within acceptable safety margins, it cannot rely on a single power plant.

The annual peak on none of the micro isolated systems surpassed 188,5 MW in 2013. The average and median peak load, with 20,8 and 4,2 MW respectively, are much smaller.

None of the conventional plants currently installed on the micro isolated systems have a capacity larger than 27 MW. The average and median plant size are, with 3,9 and 1,1 MW respectively, much smaller.

The small size of the load to be served, the strong variation in demand, further affected by the increasing penetration of RES, reduces also the choice of technologies of the conventional powers plants that can be employed within the micro isolated systems.

All conventional generation capacity on the NII isolated systems is fuelled by diesel or fuel-oil.

(b) The annual load factors in all micro isolated systems are low. The load factor did not surpass 0,54 in 2012 in any of the micro isolated systems. The average and median peak load of both 0,38 are even smaller. In view of the priority access of RES and the fact that the load factors used here reflect the entire electricity system of the micro isolated system, the load factor for conventional power plants on NIIs is even lower.

The annual load factor in the Greek interconnected system is normally about 50 % for all units and 65 % for thermal units (¹).

(¹) Currently, in view of the exceptional circumstances created by the Greek economic crises, they are reduced to 37 % for all units and 42 % for thermal units.

The annual load factor is indicative of the actual use that is made of power plants during a given year and hence their ability to earn revenue.

The increasing penetration of RES will reduce the load to be served by conventional power plants further.

- (c) Several projects exist that aim to interconnect the NIIs, in particular the Cyclades and Crete, with the main Greek interconnected system. As explained above, conventional power plants on the NIIs are not as efficient as the power plants installed in the interconnected system and are therefore unlikely to be economically viable once the NIIs on which it is located is interconnected.

The possibility that an isolated system will be interconnected is thus a serious disincentive for investing in conventional capacity on the NIIs.

- (d) The relatively small load to be served means that relatively small reversals in demand are likely to affect the generation capacity required within a given isolated system. The lack of interconnection capacity means that all changes in demand by necessity must be matched by generation capacity located within the micro isolated system.

This factor increases the need for expediency and flexibility in responding to longer term demand reversals.

This need for flexibility is further enhanced by the perceived difficulties to find suitable sites for conventional power plants on the NIIs and the duration of licensing and permitting procedures.

- (e) The ratio of maximum over minimum annual demand in 2012 (⁽¹⁾) in all micro isolated systems is at least 3,35 but is higher, often much higher, for a given micro isolated system. Indeed, the average and median ratio of maximum over minimum demand are 6,27 and 5,98.

The ratio of maximum over minimum demand in 2010 in the Greek interconnected system is about 3.

The higher ratio of maximum over minimum demand reflects the degree of flexibility and reserves that, even within a given year, need to be available within the generation capacity installed in an isolated system.

It is noteworthy in this regard that in 2012 on about 60 % of the micro isolated systems use is made of mobile power generators.

- (49) The Commission therefore concludes that substantial problems exist for the operation of conventional power plants within the NII isolated systems as identified in the table above.

4.3. ASSESSMENT OF THE DEROGATION REQUESTED FROM CHAPTER III

4.3.1. The derogation from the provisions in Chapter III cannot apply to new capacity

- (50) Pursuant to Article 44(1) of Directive 2009/72/EC derogations from the provision of Chapter III can only be granted as far as refurbishing, upgrading and expanding existing capacity is concerned.
- (51) Consequently, derogation from the provisions in Chapter III of Directive 2009/72/EC cannot be granted for new capacity.
- (52) Instead, given that the isolated systems on the NIIs are distribution networks, should the authorisation procedure for new capacity fail to provide for the satisfactory authorisation of new capacity for the isolated systems on the NIIs, the Greek authorities may consider using the provisions of Article 7(3) of Directive 2009/72/EC also for new small conventional capacity. Such new small conventional capacity may for instance include temporary generation capacity that may be made available on a long term basis without permanent attribution to a specific location.

⁽¹⁾ The figures refer to 2012 for nearly all isolated systems with few exceptions, where the year 2011 is used as these were the latest figures available.

4.3.2. The derogation from the provisions of Chapter III cannot apply to Crete

- (53) As stated above, all NIIs are micro isolated systems, with the exception of Crete, which is a small isolated system.
- (54) Consequently, derogation from the provisions in Chapter III of Directive 2009/72/EC cannot be granted for Crete.

4.3.3. The derogation from the provisions in Chapter III does not cover RES and CHP plants

- (55) The application does not explicitly mention that the requested derogation regards conventional plants only.
- (56) Article 133(3) of Law 4001/2011 however expressly excludes electricity produced by using renewable energy sources, by high-efficiency cogeneration or hybrid plants and in the case of auto producers from the scope of exclusive production licence that may be awarded to PPC. The same follows from Article 225 of the NII Code.
- (57) Moreover, the provided justification relates to substantial problems with the operation of conventional power plants only. In fact, it is reasoned that those power plants are confronted with substantial problems as a result, *inter alia*, of the increase in RES penetration.
- (58) Consequently, even if the application should seek to request derogation from the provisions of Chapter III of Directive 2009/72/EC for generation plants other than conventional power plants, the derogation cannot be granted, as no grounds justifying it were provided.

4.3.4. The derogation for the authorisation of refurbishing, upgrading and expanding existing capacity can be granted

- (59) In view of the above-mentioned substantial problems for the operation of conventional power plants within the small isolated systems, derogation can be granted for the authorisation of existing conventional capacity to the extent that this concerns the refurbishing, upgrading and expanding of existing conventional capacity. Such authorisation can be directly granted to PPC.
- (60) For the purpose of this derogation:
 - (a) existing conventional generation capacity comprises projects for the construction of conventional generation capacity for which a license by RAE has already been granted and has not been cancelled on the date this Decision takes effect;
 - (b) the full demolition of the main generation capacity on an existing site and its replacement by a new electricity generation installation is considered as construction of new capacity;
 - (c) the placement of temporary generation capacity within the perimeter of the existing capacity constitutes expanding existing capacity.
- (61) However, there are no grounds for a derogation from the criteria and conditions, such as those laid down in Article 7(2) of Directive 2009/72/EC, under which an authorisation is granted to PPC.
- (62) Moreover, in case the derogation is granted directly to PPC, it is important that the terms stipulate the obligations as regards the time by which the authorised conventional power plant must be fully operational and include provisions ensuring full and effective compliance with such obligations. Upon expiry, on RAE's sole discretion, such direct authorisation can be prolonged but only if it expired for reasons fully beyond the control of PPC. Upon expiry, RAE should organise an authorisation procedure in full compliance with Article 7(1) of Directive 2009/72/EC, thus including the participation of third parties.

4.3.5. The derogation cannot cover tendering for new capacity

- (63) By definition, tendering within the meaning of Article 8 of Directive 2009/72/EC concerns the capacity that remains to be constructed and authorised and, hence, constitutes new capacity.
- (64) For the reasons already set out above, derogation for new capacity should not be granted pursuant to Article 44(1) of Directive 2009/72/EC.

4.4. ASSESSMENT OF THE REQUESTED DEROGATION FROM CHAPTER VIII

4.4.1. The derogation from the provisions of Chapter VIII does not cover Article 32 on third party access

- (65) The application concerns the derogation from Chapter VIII of Directive 2009/72/EC and, hence, may be deemed to include a request for derogation from the provisions of Article 32 regarding third party access ('TPA').
- (66) The application does not specify whether the requested derogation also covers Article 32 of Directive 2009/72/EC nor does it provide any grounds justifying such a derogation. Instead, Law 4001/2011 and the NII code oblige DEDDIE to provide non-discriminatory third party access to the distribution system as operated by DEDDIE (e.g. Article 127 of Law 4001/2011). Consequently, such a derogation cannot be granted.

4.4.2. Derogation from Article 33 on market opening and reciprocity

4.4.2.1. No grounds for permanent derogation from Article 33 of Directive 2009/72/EC

- (67) The application essentially argues that PPC should remain the sole supplier licensed to supply customers on the NII on the grounds that developing the necessary infrastructure for the operation and supervision of the electricity market in micro isolated systems together with those necessary for market opening for third party suppliers entails operating costs to the NII operator that outweigh the benefits that may accrue to consumers from market opening.
- (68) As becomes apparent from the RAE opinion, the infrastructure installed on the NIIs seeks to ensure that the NII PSO can be administered, in compliance with existing law, in a transparent, verifiable and non-discriminatory manner. Moreover, the infrastructure is required for operating the NII isolated systems from a technical and economical point of view. Consequently, as the infrastructure is necessary in any event to meet those requirements, regardless as to the number of suppliers that are licensed on the NIIs, market opening does not increase the cost of the infrastructure.
- (69) Even if similar infrastructure is required, market opening is not intrinsically connected to the technical operation of the isolated systems on the NIIs or the NII PSO as there is no causal link between the technical and economical operation of these isolated systems and the operation of the NII PSO in accordance with the relevant legal requirements on the one hand and the question as to whether one or several suppliers are licenced to supply NII electricity consumers on the other hand.
- (70) It is correct that the higher production costs in the NIIs as compared to the production costs in the interconnected system must be recovered from suppliers active in the NIIs by repartitioning the respective part of the NII PSO compensation as a function of the electricity sales to their customers. However, establishing the production costs on the NIIs is in any way required to determine the financial compensation for the NII PSO, regardless as to the number of suppliers active on the NIIs.
- (71) The sole additional requirement for market opening is the repartitioning to each supplier of the respective parts of the NII PSO compensation as a function of the electricity sales of their customers. Even the related customer data, in particular metering data, are required regardless as to whether one or more than one supplier is licensed to supply NII based customers.
- (72) Consequently, granting the NII PSO compensation to suppliers merely entails the ability to attribute customers' metering data to a particular licenced supplier, which is primarily an administrative process based on information entirely or to a very large extent collected regardless as to whether market opening on the NIIs exists or not. Secondly, this ability is a precondition for the proper operation of any electricity supply market. Such costs can therefore not be accepted as providing grounds for derogation for market opening, as they are not specific to the operation of the isolated systems on the NIIs and connected to a substantial problem in the operation thereof.
- (73) It is important to note that drawing up registers to attribute metering information to suppliers is part of the infrastructure to be put in place. Whereas putting in place the full envisaged infrastructure will facilitate the optimal operation of isolated electricity systems, the full realisation of the related investments is not a necessary condition for market opening to take place.

- (74) The fact that a large variation in the values of the average annual variable production cost per NII may exist is immaterial. Indeed, even if substantiated, such variation concerns the cost of producing electricity within the NII isolated systems. Establishing this amount is already required for administrating the NII PSO in accordance with the legal requirements and, moreover, is not affected in any way by the number of suppliers licenced to supply NII based customers. Moreover, in view of the fact that the administration of the NII PSO is already based on a monthly system for each isolated system separately, it is difficult to conceive that large annual variations per NII can give rise to material problems.
- (75) It follows from the above that the number of suppliers licensed to supply customers on the NIIs is neither intrinsically linked to the technical and economic operation of the isolated systems nor to the operation of the NII PSO in accordance with the relevant legal requirements.
- (76) It can moreover be noted that market opening has benefits that outweigh the costs, should those exist, of market opening. As RAE notes, alternative suppliers in the NIIs could provide additional significant benefits to the NII based customers by combining the provision of other services with that of electricity supply.
- (77) Consequently, the request for derogation on a permanent basis from Article 33 should not be granted.

4.4.2.2. Limitation in duration for an isolated system from Article 33 of Directive 2009/72/EC

- (78) In view of the above, it must be recognised that market opening requires setting up practical arrangements to enable the NII isolated systems to be operated fully in line with the NII Code. Practical problems related to market opening may entail either the unavailability of the registers required to attribute meters and metering data to suppliers or the fact that the optimal infrastructure configuration is not yet in place. On this basis, granting a derogation from Article 33 of Directive 2009/72/EC that is limited in time can be envisaged.
- (79) In assessing the duration of such a derogation from Chapter VIII, the following two considerations are relevant:
- (a) as already pointed out, the most important element required for enabling market opening on the NIIs is the availability of a register on the NIIs allowing the attribution of metering data to a given supplier. Article 327(4) of the NII Code stipulates that the register required for this purpose is finalised at the latest 2 years after the entry into force of the NII Code. The availability of the register is a necessary condition for market opening in practical terms;
 - (b) the full completion of the investment programme for the infrastructure to be installed on the NIIs would certainly facilitate the practical operation of market opening on the NIIs. However, this is however not a necessary requirement. Article 237(7) of the NII Code lays down a schedule by which all the current NIIs are supposed to be equipped with the additional infrastructure to be installed on the NIIs at the latest 5 years following the entry into force of the NII Code.
- (80) Consequently, a derogation from market opening should be granted for at least 2 years after the entry into force of the NII Code, i.e. until 17 February 2016, in order for the registers, that are a necessary requirement for market opening, to be established. As the full infrastructure has to be installed at the latest 5 years after the entry into force of the NII code, the validity of the derogation should in any event be limited to 5 years after the entry into force of the NII code, i.e. until 17 February 2019 for any of the NII isolated system. However, as the derogation can only be justified where substantial and material problems remain for market opening that are directly attributable to the non-completion of the infrastructure investment programme on the NIIs, it should be verified regularly whether such problems persist on a given NII isolated system. Such verification should use as a benchmark an investment plan by DEDDIE, approved by the competent Greek authorities, for the installation of the required infrastructure on the NIIs. This plan should therefore be finalized and approved by 17 February 2015.
- (81) In order not to delay market opening unnecessarily, the infrastructure investment plan of DEDDIE should be approved by RAE and should prioritise the isolated systems of Crete and Rhodes, as those are the most populous NIIs.
- (82) From 17 February 2016, and thereafter on an annual basis until 17 February 2019, DEDDIE should draw-up a report, which should be approved by RAE, specifying on what grounds market opening has not yet occurred in a given NII isolated system. This report should be published and notified to the Commission.

4.4.3. The derogation from the provision of Chapter VIII does not cover Article 34

- (83) The application concerns derogation from Chapter VIII of Directive 2009/72/EC and, hence, may be deemed to include a request for derogation from Article 34 regarding direct lines within the meaning of Article 2(15) of Directive 2009/72/EC.
- (84) The application does not specify whether the requested derogation also covers Article 34 of Directive 2009/72/EC.
- (85) Consequently, even if the application is meant to request derogation from Article 34 of Directive 2009/72/EC, such a derogation should not be granted as no grounds justifying it were provided.

4.4.4. Interconnectors — application of the derogation from Chapters III and VIII

- (86) The present derogation concerns micro isolated systems that are precisely characterised by the fact that they are not or, in the case of small isolated systems, only to a very limited degree, interconnected with other electricity systems.
- (87) However:
 - (a) according to the recently approved Ten-Year Development Plan of the Greek transmission system operator, the Independent Power Transmission Operator, or 'ADMIE' S.A], ADMIE, the interconnection of the Cyclades islands is expected to be completed by 2018 in three phases, with certain Cyclades islands being interconnected with the Greek interconnected system well before this date;
 - (b) moreover, the interconnection of Crete is expected to be completed by 2020. The relevant parts of the project for the first three years have been included in the 2013 approved Ten-Year Development Plan of ADMIE. The final plan must be included in the Ten-Year Development Plan that will be approved in 2014.
- (88) It is necessary to explicitly provide that the present derogation for a given isolated system ceases automatically as soon as an interconnection between a given isolated system and the Greek interconnected system has become fully operational.
- (89) DEDDIE, even if legally and functionally unbundled, is 100 % owned by PPC. Contrary to a distribution system operator within the meaning of Directive 2009/72/EC, DEDDIE also has extensive tasks in the operation of the NII isolated systems and the operation of generation on the NIIs, including the conventional generation capacity owned by PPC and, hence, its economic remuneration. As set out above, interconnection affects the economic viability of the conventional power plants currently installed within the isolated systems on the NIIs.
- (90) Derogations should only be granted if they are proportional and do not go beyond what is strictly necessary. It is therefore necessary to provide clear incentives and transparency as regards decisions whether to interconnect the NII isolated systems.
- (91) Article 108 of Law 4001/2011 provides that:

'ADMIE SA shall submit a ten-year Greek electricity transmission system development plan to the RAE by 31 March each year [...] The ten-year Greek electricity transmission system development plan shall in particular: [...] (c) provide a technical and financial cost-benefit study for important transmission works [...], especially for [...] connectors between islands and the transmission system, including a timeframe, estimated cash flow and financing requirements for all investment projects'.

- (92) In order to ensure that clear incentives and transparency as regards decisions whether to interconnect the NII isolated systems exist, the Greek authorities should ensure that:
 - (a) when authorising or tendering for existing or new capacity for a given isolated system on a NII, ADMIE, DEDDIE and RAE systematically consider the alternative of interconnecting the isolated system of which the given NII is part. Such authorisation for existing or new capacity should be refused if constructing an interconnector is more cost effective. Costs should comprise all costs to supply electricity to end-customers within the isolated system, including NII PSO compensation;

- (b) the cost-benefit study for important transmission works by ADMIE as provided for in Article 108 of Law 4001/2011 only considers efficient costs of investing and operating the interconnection. In particular, it should not consider revenues lost by or depreciation in value of the conventional generation assets already installed on the NIIs;
- (c) RAE publishes in conjunction with ADMIE's ten-year investment plan as provided for in Article 108 of Law 4001/2011, the overall costs, including the NII PSO compensation, of supplying electricity customers in each of the NII isolated systems. Unless the construction of an interconnector is integrated in ADMIE's ten-year investment plan as provided for in Article 108 of Law 4001/2011 as approved by RAE, RAE will, upon its own initiative or upon simple request by a third party, organise a tender as provided for in Article 22(7)(b) of Directive 2009/72/EC for the construction of an interconnector connecting one or several NII isolated systems. An interconnector should be constructed if its construction lowers the overall costs, including the NII PSO compensation, of supplying electricity to customers located on the NIIs;
- (d) RAE sets a clear deadline for the completion of the construction of an interconnector. If the interconnector is not constructed or not within the time frame set by RAE, damages should be sought for the non-realized costs savings.

4.5. DURATION

- (93) It is necessary to review the facts on which the present derogation is based, in particular after the plans for interconnecting certain isolated systems are due to be completed and the deadlines for installing the infrastructure as provided for in Article 237 of the NII Code have expired.
- (94) Consequently, any derogation shall be valid until 1 January 2021.

4.6. RETROACTIVE EFFECT

- (95) As stated above, the application of 17 January 2012 renewed the initial application that was submitted in 2003.
- (96) Article 26(1) of Directive 2003/54/EC, repealed by Directive 2009/72/EC, also contained provisions allowing Member States to apply for derogations from certain provisions of that Directive in case of substantial problems with the operation of small and micro isolated systems. Pursuant to article 48 of Directive 2009/72/EC references to the repealed Article 26(1) of Directive 2003/54/EC shall be construed as references to Article 44(1) of Directive 2009/72/EC.
- (97) The definitions of small isolated system and micro isolated system employed in Article 2(26) and (27) of Directive 2003/54/EC are identical to those used in Article 2(26) and (27) of Directive 2009/72/EC.
- (98) Both these definitions refer to the demand for electricity in isolated systems in 1996, which did not change. Moreover, Crete was not interconnected to the Greek interconnected system neither in 2003 nor in 2012, or at the moment at which the present derogation decision takes effect
- (99) Consequently, all micro and small isolated electricity systems that qualify as micro or small isolated system in the application, qualified as such when the initial application was made and when the present derogation decision takes effect.
- (100) Consequently, no legal or factual changes have occurred with regard to the small and micro isolated systems that may qualify for derogation under Directive 2003/54/EC and Directive 2009/72/EC.
- (101) Article 26(1) of Directive 2003/54/EC allowed granting derogation from its Chapter III, which contains provisions, as those of Chapter III of Directive 2009/72/EC regarding authorisation procedures for new capacity and tendering for new capacity.
- (102) Article 26(1) of Directive 2003/54/EC allowed granting derogation from its Chapter VII which contains provisions, as those of Chapter VIII of Directive 2009/72/EC, concerning third party access, market opening and direct lines.
- (103) Had the Commission granted derogation in response to the initial application, it could have done so on the same terms as under the present derogation under Directive 2009/72/EC.

- (104) Moreover, no change in the factual circumstances has occurred since 2003. Indeed, the geographical situation of the NIIs, the economic factors governing the operation of the electrical systems within NII isolated systems and the nature of the substantial problems that exit with the operation of conventional power plants within the NII isolated systems have not materially changed since 2003.
- (105) The initial application has been pending since 2003. The non-action of the Commission should not be to the detriment of the Hellenic Republic. The Hellenic Republic has complied with its obligations under Article 26(1) of Directive 2003/54/EC and Article 44(1) of Directive 2009/72/EC and submitted a duly justified request for derogation under those Articles for the isolated systems on the NIIs.
- (106) It is therefore appropriate that the present derogation decision takes effects from the date of notification of the initial application, i.e. from 5 December 2003,

HAS ADOPTED THIS DECISION:

Article 1

This decision applies to small and micro isolated systems as identified in the Table.

For the purpose of this Decision, Crete is a small isolated system whereas all other isolated systems are micro isolated systems.

Article 2

1. A derogation is granted from the provisions of Article 33 of Directive 2009/72/EC for small and micro isolated systems.
2. This derogation shall be valid until 17 February 2016 or the full installation of the infrastructure as provided for in Article 237(7) of the NII Code, whatever comes later. In any event, this derogation shall cease to apply on 17 February 2019.
3. The Greek authorities shall by 17 February 2015 draw up a plan for the infrastructure investments as provided for in Article 237(7) of the NII Code, specifying, separately for each NII isolated system, by which date the infrastructure shall be fully installed. This plan shall prioritise Crete and Rhodes.
4. From 17 February 2016, and thereafter on an annual basis until 17 February 2019, the Greek authorities shall draw-up a report specifying, for each NII isolated system: (a) whether market opening has occurred; (b) the status of the infrastructure investments with relation to the relevant plan (c) the substantial and material problems that persist for market opening; and (d) whether those problems can be directly attributed to the non-completion of the infrastructure investment as provided for in Article 237(7) of the NII Code.

Article 3

1. A derogation is granted from the provisions of Article 7(1) of Directive 2009/72/EC according to which authorisations for refurbishing, upgrading and expanding existing conventional capacity within micro isolated systems can be granted directly to PPC.
2. For the purpose of this derogation:
 - (a) existing conventional generation capacity shall include projects for refurbishing, upgrading and expanding conventional generation capacity for which a valid license issued by RAE exists on the date of notification of this Decision;
 - (b) the full demolition of the main generation capacity on an existing site and its replacement by a new electricity generation installation shall not constitute existing capacity but construction of new capacity;
 - (c) the placement of temporary conventional generation capacity within the perimeter of existing capacity shall constitute expanding existing capacity.

3. Upon expiry of the authorisation granted in accordance with the first paragraph, such authorisation can be prolonged, on RAE's sole discretion, provided the delays are due to reasons entirely beyond the control of PPC.
4. This derogation shall no longer apply to authorisations granted pursuant to the first paragraph that have expired or cancelled.
5. All other provisions of Article 7 Directive 2009/72/EC continue to apply in full.
6. This derogation is valid until 1 January 2021.

Article 4

1. The derogations provided for in this Decision shall no longer apply to small and micro isolated systems once they are interconnected with the interconnected system.
2. The Greek authorities:
 - (a) when authorising or tendering for new capacity within a given NII isolated system, shall systematically consider the alternative of interconnecting the isolated system of which the given NII is part. An authorisation for new capacity shall be refused if constructing an interconnector is more cost effective. Costs shall comprise all costs to supply electricity to end-customers within the isolated system, including NII PSO compensation;
 - (b) shall ensure that the cost-benefit study for important transmission works by ADMIE as provided for in Article 108 of Law 4001/2011 shall only consider efficient costs of investing and operating the projected interconnection. It shall not consider revenues lost by or depreciation in value of the conventional generation assets already installed on the NIIs;
 - (c) shall publish, in conjunction with ADMIE's ten-year investment plan as provided for in Article 108 of Law 4001/2011, the overall costs, including the NII PSO compensation, of supplying electricity customers in each of the NII isolated systems. Unless the construction of an interconnector is integrated in ADMIE's ten-year investment plan as provided for in Article 108 of Law 4001/2011 as approved by RAE, the Greek Authorities shall, upon their own initiative or upon simple request by a third party, organise a tender as provided for in Article 22(7)(b) of Directive 2009/72/EC for the construction of an interconnector connecting one or several NII isolated systems. An interconnector shall be constructed if its construction lowers the overall costs, including the NII PSO compensation, of supplying electricity to customers located on the NIIs;
 - (d) shall set a clear deadline for the completion of the construction of an interconnector. If the interconnector is not constructed or is not constructed within the set time frame, the Greek Authorities shall seek damages for the non-realised costs savings.

Article 5

The Decision shall apply as from 5 December 2003.

Article 6

This Decision is addressed to the Hellenic Republic.

Done at Brussels, 14 August 2014.

For the Commission

Michel BARNIER

Vice-President