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State Aid Enforcement in the Energy Sector in South Eastern Europe

14/04/2016 / Miloš Vučković

About Karanović & Nikolić

- Leading international legal practice in South Eastern Europe
- Regional network
- Energy & Infrastructure Practice: projects in the oil & gas, electricity, renewable energy, mining and infrastructure sectors
- Competition Practice with expertise in State aid



Gv't Support for Renewables in the Region

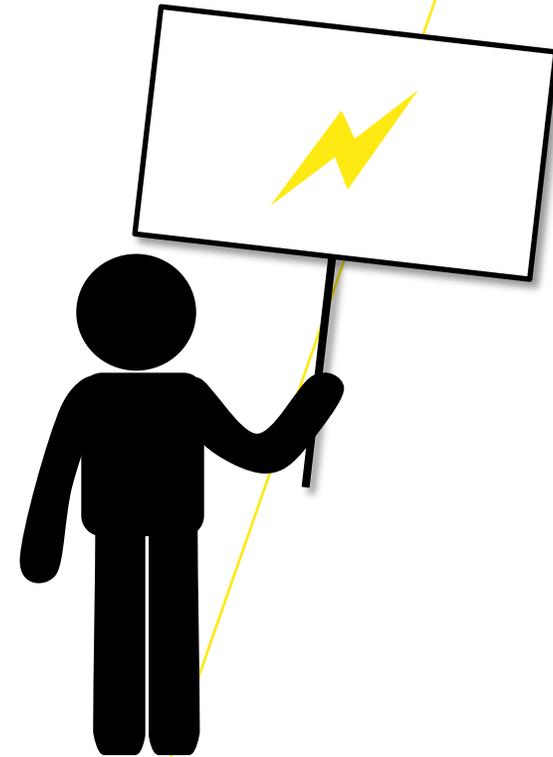


- Energy Community (EC) binding targets for renewable energy (RE) and promotion of RE investments in the region
- Typical support schemes:
 - long-term PPAs with regulated feed-in-tariffs or premiums
 - guaranteed off-take of a suppliers' entire production
 - exemptions from balancing obligations
 - preferential terms for land leases or facility improvements
 - privileged generator status

Specific Examples of Support Schemes

	SLO	feed-in-tariffs or premiums low-interest loans to renewable energy projects through tendering
	CRO	feed-in-premiums competitive tender procedures for use of state property in RE installations
	BiH	feed-in-tariffs granted for 15 years in the RS and 12 years in the FBiH priority access to the grid exemption from balancing obligations
	SER	feed-in-tariffs granted for 12 years priority access to the grid exemption from balancing obligations
	MNE	feed-in-tariffs granted for 12 years priority access to the grid exemption from balancing obligations
	MKD	feed-in-tariffs granted for 20 years for wind farms 15 years for other technologies exemption from balancing obligations

Regional Overview: State Aid Enforcement in the Energy Sector



State Aid Laws



SLO Monitoring of State Aid Act, 2004



CRO State Aid Act, 2014



BiH Law on System of State Aid, 2012



SER Law on State Aid Control, 2009



MNE Law on State Aid Control, 2009



MKD Law on State Aid, 2010

State Aid Monitoring Authorities



SLO Ministry of Finance



CRO Ministry of Finance



BiH State Aid Council (ministries of finance at the RS and FBiH levels)



SER Commission for State Aid Control



MNE State Aid Control Commission



MKD Commission for Protection of Competition

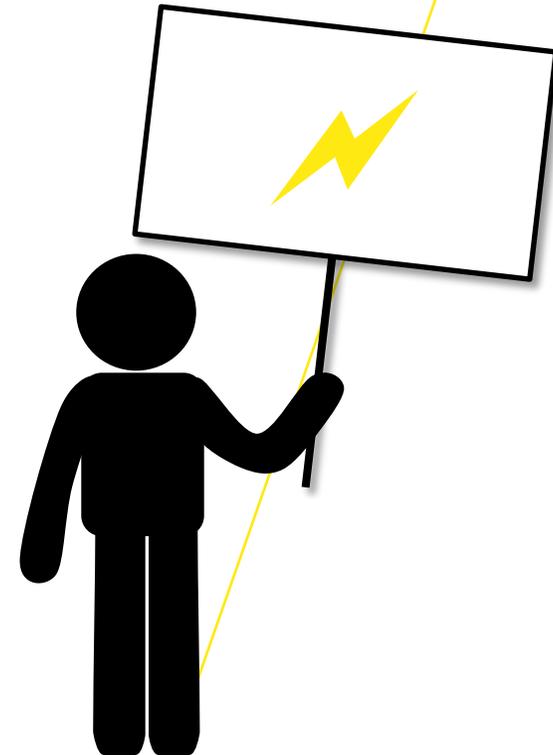
Notifications to the State Aid Authority

	SLO	to be notified to Ministry of Finance by the provider
	CRO	to be notified to Ministry of Finance by the provider
	BiH	to be notified to the State Aid Council by the provider; notification not currently widespread
	SER	to be notified to the State Aid Commission by the provider; notification is not currently widespread
	MNE	to be notified to the State Aid Control Commission by the provider; need for improvement in notifications
	MKD	to be notified to the Commission for Protection of Competition Commission; need for improvement in notifications

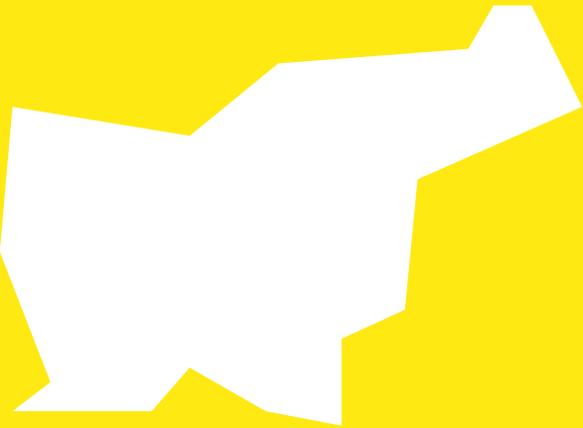
Assessment and Enforcement Capacities

	SLO	Relatively advanced Notifications regularly submitted to European Commission
	CRO	Relatively advanced Notifications regularly submitted to European Commission
	BiH	Capacity of State Aid Council not yet fully operational and must be strengthened
	SER	Capacity of Commission for State Aid Control must be strengthened Independence from Ministry of Finance required
	MNE	Capacity of State Aid Control Commission must be strengthened Independence from Ministry of Finance required
	MKD	Capacity of the Commission for Protection of Competition must be strengthened

Energy Sector Case Studies



Slovenia



Support for production of electricity from renewable energy sources and in co-generation installations

- Purpose of scheme: environmentally friendly electricity production
- Aid granted to compensate for the difference between RE production costs and market price
- Scheme found in compliance with the Environmental Aid Guidelines
- Feed-in-tariff price not to exceed production costs and aid granted only to high efficiency co-generation facilities

Croatia



Investment in modernization of production equipment and technology in energy sector

- Purpose of scheme: environmentally friendly electricity production
- Scheme found to be in compliance with EU State aid rules
- Funds to be used for:
 - investing in production of new products;
 - development and/or modernization of new techniques;
 - modernization of production procedures and investing in high value production.

Bosnia & Herzegovina



Strengthening the State Aid System in BiH

- No reported cases on State aid enforcement in electricity sector
- GIZ International Services is implementing a EUR 1.6 million project aimed at strengthening the State aid system in BiH
- Objectives: (i) alignment of the national legal framework with the EU acquis; (ii) capacity building of the State Aid Council and other related institutions; (iii) awareness raising on State aid notification requirements

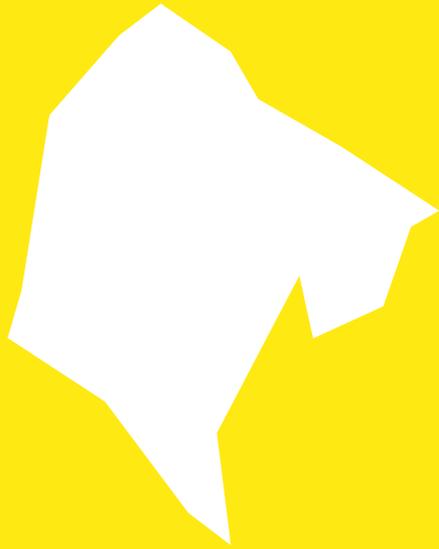
Serbia



Elektroprivreda Srbije – TPP Kolubara B

- Scheme involved state guarantees for a loan for improvement of TPP Kolubara B
- Scheme found to be in compliance with EU State aid rules
- Energy Community found decision to be problematic
- Correct principles for determining when State aid for provision of services of general economic interest is permissible not applied
- Decision failed to analyze how the State aid measure contributed to executing a project of special importance to Serbia

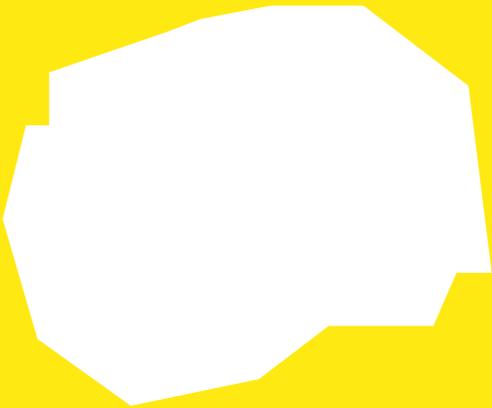
Montenegro



Krnovo Wind Power Project

- Scheme involved promoting wind power production by guaranteeing price of electricity for the entire electricity output of the plant in PPA
- State aid found to be compatible with the EU State aid rules since it enabled electricity production from a RE source which would not have been produced absent incentives;
 - project was found to contribute to the development of other wind farms in Montenegro;
 - price in the PPA provided for a very low internal rate of return;
 - aid was granted for a 12-year period, while depreciation period was higher than provided for in the PPA.

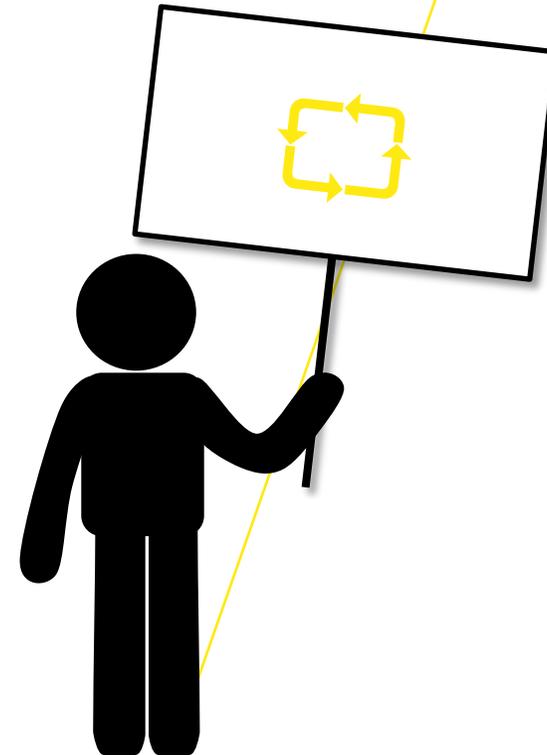
Macedonia



Electricity Transmission System Operator of Macedonia

- Scheme involved State guarantees for a loan from international financial institutions
- State aid found to be compatible with EU State aid rules
- Although guarantees created certain economic advantages, they did not distort competition because MEPSO A.D. was only company in Macedonia carrying out activity of transmission of electrical energy
- Projects financed by the loan also found to be projects of public interest for improving the quality of the transmission of electricity in Macedonia

Obligations of EC Contracting Parties

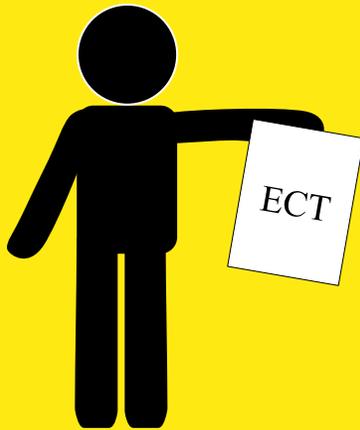


What do the case studies illustrate?



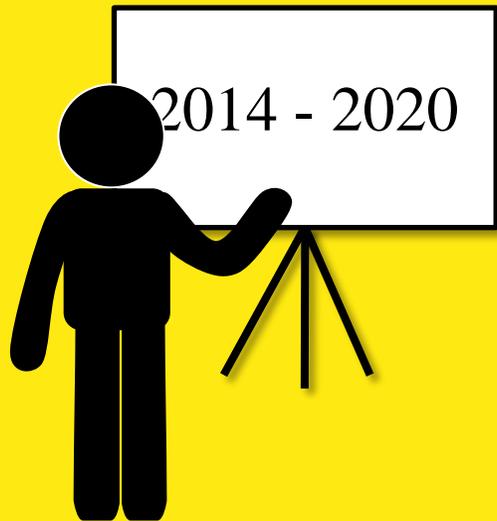
- State aid systems at various stages of development in the region
- While the EU acquis has been transcribed into local legislation, implementation and enforcement needs to be improved as well as the quality of decision making of State aid authorities
- Obligations of EC contracting parties must be considered in light of current State aid enforcement practices

Obligations stemming from the ECT



- Main objective of the Energy Community Treaty (ECT):
to create undistorted energy markets without internal boundaries
- This involves eliminating practices which impede free competition in the energy markets of the region
- Art. 18 of ECT: *any public aid which distorts or threatens to distort competition by favouring certain undertakings or certain energy resources is incompatible with the proper functioning of the treaty and that contracting parties should enforce EU State aid rules on the basis of the criteria set out in Article 107 of the TFEU*

EU Guidelines on State aid for environmental protection and energy 2014 – 2020



- State aid may be compatible with TFEU if it facilitates development of certain economic activities
- Guidelines set out rules to assess whether State aid is permissible and compatible with TFEU in the energy and environment fields
- National enforcement authorities in EC countries expected to follow these Guidelines
- State aid should be limited to the minimum needed to achieve the environmental protection or energy objective aimed for
- General Test: whether the State aid measure ensures that the positive impact of the aid towards an objective of common interest exceeds its potential negative effects on trade and competition

Energy Community Policy Guidelines for Reforming Support Schemes



- Annual fixed budget requirements
- Draft support schemes should be notified to State Aid enforcement authorities and the ECS before they are adopted
- Support granted to renewable energy producers through competitive bidding
- Feed-in premiums rather than a feed-in-tariffs
- Establishment of a Renewable Energy Operator to manage support scheme
- Charging producers with ‘shallow’ rather than ‘deep’ connection costs
- Introduction of balancing responsibility for medium and large renewable energy producers
- Avoidance of retroactive changes to support schemes

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Thank you