

National Assembly of the Republic of Bulgaria
Parliamentary Energy Committee

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EFET¹ Comments on Proposed Amendments to Bulgarian Energy Act

29 March 2019

Dear Mr Dobrev,

EFET welcomes the opportunity to comment on the recently proposed amendments to the Bulgarian Energy Act, as published on 22.03.2019, and would hereby highlight the importance of the proposed abolishment of the Bulgarian export fee as well as the need to abolish, at the same time, the Bulgarian import fee.

With regard to the export fee, its existence has multiple negative practical consequences, including preventing completion of the Internal Energy Market, distortion of competition, discrimination between market participants, and reduction of cross-border trade and liquidity. For this reason, EFET has been pushing for its abolishment for several years, including a complaint filed to the European Commission in 2013. Most recently, following the ECJ ruling in Case C-305/17², EFET outlined the urgent need to abolish the export fee in context of the CESEC Electricity Plenary in Brussels on 22.01.2019 as well as in our comments to the CESEC Electricity Action Plan. To properly contextualize the importance of the proposed amendments, it must be noted that the Bulgarian 'Export Fee' consists of the application of *internal* grid charges utilised to finance the Transmission System Operator (specifically, the Transmission Fee and the Access Fee) on exported quantities. As such, it is not compliant with Regulation 714/2009³ and, more importantly, as is clear from Case C-305/17, it constitutes a charge equivalent to a customs duty⁴, which is prohibited by Article 30 of TFEU and in violation of the principle of free movement of goods. Consequently, there can no longer be any doubt regards its (lack of) compliance with EU

¹ The European Federation of Energy Traders (EFET) promotes competition, transparency and open access in the European energy sector. We build trust in power and gas markets across Europe, so that they may underpin a sustainable and secure energy supply and a competitive economy. We currently represent more than 100 energy trading companies, active in over 27 European countries. For more information: www.efet.org.

² ECJ Case C-305/17, "FENS spol. s r.o. v Slovak Republic – Úrad pre reguláciu siet'ových odvetví", ruling of 06.12.2018

³ Regulation (EC) No 714/2009 on conditions for access to the networks for cross-border exchanges in electricity, which separates permissible transmission system financing into (a) internal charges (paid via grid charges), (b) cross-border charges (paid via cross-border capacity allocation), and (c) transit charges (paid via the ITC Mechanism), without foreseeing overlapping application or double-payment of the aforementioned charges.

⁴ The 'Export Fee' discriminates between (i) cross-border and domestic trade, (ii) between exporters and domestic traders, and (iii) domestic and foreign end-customers, in a manner identical to the Slovak 'Export Fee', which has been ruled by the ECJ in Case C-305/174 to constitute a charge equivalent to a customs duty.

legislation nor the urgent need for its abolishment, and therefore EFET emphasises that its application must not continue beyond expiry of the current EWRC Regulatory Period on 30.06.2019.

In view thereof, **EFET welcomes the proposed amendments (§ 14., § 19., § 25., § 26.) which, if accepted in their current form and implemented accordingly, would ensure abolishment of the 'Export Fee' by the 30th June 2019.** It is therefore essential that the Bulgarian Parliament approves the proposed amendments and that other state institutions implement them comprehensively.

With regard to the import fee, EFET underlines that the requirement that traders importing electricity into Bulgaria pay into the 'Electricity System Security Fund' has similar practical consequences as the export fee, i.e. it distorts competition, reduces cross-border trade, and is an obstacle to completion of the Internal Energy Market. Moreover, as it refers to application of an *internal* fee to cross-border trade, it is not in compliance with the EU legislative framework much in the same way as the Export Fee. Any fee, charged against electricity import transactions in Bulgaria, whether payable to a TSO or any other national body, constitutes an illegal impediment to trade between EU Member States, of a type not permitted under the EU Treaty.

Therefore, **EFET proposes that the amendments to the Bulgarian Energy Act also cover abolishment of the import fee, by repealing Article 36f (1) 2. of the Act⁵.**

Given the clear legal case for abolishment of the export fee, as well as the need to include abolishment of the import fee, **EFET strongly supports the Bulgarian Parliament in taking the required steps in order to ensure compliance of the Bulgarian regulatory framework with that of the European Union, and to remove critical obstacles to competitive, liquid, and liberalized cross-border energy markets.**

Yours sincerely,

On behalf of the European Federation of Energy Traders



Sandra Milardovic,

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⁵ Article 36f (1) defines the persons required to contribute to the Electricity System Security Fund, which includes in 2. traders importing electric power.