EU RENEWABLE ENERGY MARKETS' GOVERNANCE & ECONOMIC CRISIS. A TAXATION "MAKEOVER" ? GREECE AS A CASE STUDY

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Outline / Introduction

- Dynamic energy governance & strategy coherence:

  prerequisites to respond to the urgent call for a shift to green energy

  If these are missing ⇨ the impact of the economic crisis on energy governance appears more intense / proved by:
  - the inadequacies of EU Energy Policy &
  - the MS' failure to meet challenges and EU targets
- Greece as a case study
  - Renewable Energy Governance during the economic crisis – Recent regulatory developments:
    - Suspension of new PV project applications
    - Drastic reduction of Feed-In-Tariffs
    - Retroactive taxation by means of a "special solidarity levy" /questioned legitimacy and compatibility with EU framework
    - The so called New Deal for RES
    - Impact of these measures on RES investments

The Impact of the Economic Crisis on EU Energy Policy & Sustainable Transitions

- Economic hardship tests even smart and coherent policies
- After an increasingly record breaking growth RES sector slowed down due to lack of liquidity and availability of investments for RES infrastructure and deployment of new technologies

  ⇨ could this mean a persistence on fossil fuels?

  or could green growth be seen as panacea for coming out of the crisis?
- The key is to redirect from dirty to clean sectors without shrinking the size of the economy

  How?
  - Structural change
  - Technological efficiency improvements
  - Incentivisation of investments in green infrastructure
  - Political support

Economic Crisis & Feed-In-Tariffs

- The stability of the FiT regime was considered to be the main driver for the success

  but: 1. as a policy, FiTs cost governments a lot

  2. deficits go higher

  ⇨ **subsidy cuts!!!** (Germany, Spain, Greece, Italy)

- Despite the decrease of their popularity, **FiTs still provide stable incentives to investors**, but:
  - Local governments forced to cut domestic budgets in search of cost savings → clean energy subsidies were among the first to be targeted
  - Examples: 1. Spain stopped any new funding for RES

    2. Italy limited subsidies for 2013 to €500 million, from €6 billion in 2012

    3. Greece reduced FiTs by 46% and suspended the authorization of new PV projects for 2years

The Greek RES Case & The New Res Framework

- Greek energy road-map to 2050: "*The energy sector constitutes a cornerstone for economic development and has either direct or indirect impact on every sector of the economy.*"
- The Greek RES case:
  - **financing environment:** Severe budget constraints coupled with zero liquidity in the banking system
  - **RES sector:** one of the very few growing (+30% installations in 2012, +100% in PVs) but at an unsustainable pace
  - **FiT regime**: used to be **generous**, with tariffs incorporating a risk-premium for investors, running a deficit and **in danger of collapsing** (2GW with locked-in prices)
  - **Energy conservation:** the most potential and highest social return on investment in terms of abatement; stalled due to lack of finance and household investment

- The origin of pressures
  - **Public finances:** RES schemes increasingly difficult to finance, funds for applied research reduced
  - **Private investors:** lack of liquidity & difficulty obtaining project financing hamper realization of RES investment projects
  - **Households:** reduced incomes & high current energy costs reduce investments in energy conservation

- **…here comes the crisis…**

  The Electricity Market Operator faces an immense deficit – the high FiTs can no longer be paid to electricity producers
  - Belated measures are designed to face the deficit problem
  - Approval of the Medium-Term Fiscal Strategy Framework 2013-2016 - Urgent Application Measures (Law 4093/2012)

  ⇨ **complete change of the RES scenery in Greece** (taxation framework – contractual terms of PPAs amended)

Measures Enacted

I. **Suspension of new PV projects** (August 2012)

II. **Reduction of FiTs (in 3 stages**: August 2012, June 2013, April 2014)

III. **"Approval of the Medium-Term Fiscal Strategy Framework 2013-2016 - Urgent Application Measures"** (November 2012) (Law 4093/2012)

- Introduction of the "special solidarity levy" (2 year duration – forecast for possible one year extension)
- Shortened timeframe for the completion of projects already licensed but not yet constructed and connected to the grid (if not on time, favorable FiTs = LOST)
- Law 4152/2013: the special solidarity levy amended & increased (May 2013)

Questioned legitimacy & compatibility with Greek Constitution and EU framework

- Case brought before the Greek Supreme Court – ruling withdraws the RES producers' reasoning
- Complaints lodged with the EU Commission

IV. **Law 4254/2014:** "New Deal" (April 2014)

I. Suspension of New PV Projects

- Licensing procedure for new PV power stations & offers for connection to the grid suspended in August 2012 – suspension removed in April 2014
- Ministry: 2020 energy objectives more than covered,

  but: national targets (2,2 GW) = indicative / can be revised every 2 years

  ⇨ Greek PV industry asks for a revision & increase up to 6 GW by 2020
- Only projects with binding connection requests proceeded as scheduled

⇨ Exemption for:

- PV on roofs < 10 kW
- Fast track projects → characteristics:
  1. large budget
  2. creation of numerous jobs
  3. promotion of innovation
  4. protection of the environment

II. Reduction of FiTs

- The most generous regime in Europe was slashed up to 46% in the first two reduction stages (PVs)
- New Deal introduces new reductions (30% permanent reduction on average for PVs) depending on:
  - the technology used,
  - the time of project development,
  - the cost of the installation,
  - the location (differentiation between projects in mainland Greece and in smaller electricity grids e.g. Greek islands)
  - additional form of aid granted (e.g. in terms of a direct subsidy, tax exemption) → FiTs for projects receiving such aids face even sharper cuts
    - smaller PV projects up to 20 kW (that are not installed on buildings)
    - projects owned by farmers (not exceeding 100 kW each)

  ➡ Smoother FiT reduction (~20% on average)

- Wind and hydro projects: much smaller FiT reduction (~ 5-6% on average)

III. "Special Solidarity Levy"

- Emergency tax imposed on the turnover of RES business with 2 year duration (one year extension ~ June 2015, forecasted but did not apply)
- **Rationale** behind the backdated taxation: to address the €370 million deficit of the Market Operator caused by the now defunct FiTs and by the method the operator used for calculating an artificially low wholesale price of electricity for all generators
- **25 % - 27% - 30% tax on the turnover of PV electricity producers and not on profits!!!** (November 2012)

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on top of VAT !!!

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⇨ percentages differentiation based on the timeframe the FiT was locked upon agreement with the System Operator and the connection of the solar park to the grid

- 10% tax imposed on the turnover of all other RES and Combined Heat and Power stations – Later on with New Deal (~ 5-6% reduction)

IV. Special Solidarity levy – argued Incompatibility with EU Law & Greek Constitution – Impact on RES Investments

- Quasi binding EU Communication infringed [COM(2012) 271]: *"Complicated authorisation procedures, the lack of one-stop-shops, the creation of registration procedures, planning processes that may take months or years and* ***fear of retroactive changes to support schemes, increase project risk.*** *Such high risks, particularly, in countries with stressed capital markets, result in a very high cost of capital, raising the cost of renewable energy projects and undermining their competitiveness".*
- The special solidarity contribution could be considered a selective tax (adopted to address the deficit problem) / prohibited by EU law, unless approval is given by the EU upon notification
- RES producers have lodged complaints (arguing that the levy is an illegal state aid not notified to the Commission) before DG Energy & DG COMP* – DG Energy has closed the case
- Argued violation of the Greek Constitution:
  - Art. 17: **property right** → investors in RES could not have known that they would be taxed on revenue rather than profit (already for solar parks 40% tax on profits)
  - Art. 25, §1: **principle of proportionality** → can the state prove with justified figures and data analysis that this tax was the only possible remedy to the deficit problem?

Greek Supreme Court: Ruling on the Special Solidarity levy

- Special solidarity levy case brought before the Supreme Court via a **pilot trial** procedure (Law 3900/2010)*
- Ruling: the levy is a tax measure compatible with the Constitution & EU Law - Reasoning:
  - The levy is an emergency tax measure, within the concept of taxation policy enacted at times of austerity and justified by national interest**
  - The Electricity Market Operator –though a S.A.- acts in this case as a public entity/authority (manages the RES account under the control of the Greek Public sector)
    - ⇨ **the imposition of the levy is an act exerted while performing public powers ⇨ within the administrative courts' jurisdiction**
    - ⇨ **argumentation of the operator acting as a private company rejected**
  - Can burden a specified category of electricity producers as taxpayers, since this is justified if the taxable asset allows the burden of this particular cycle taxpayers
  - Has the character of a tax imposed on transactions, since it is imposed on the amount resulting from the transaction, i.e. on pre-tax price of electricity sales is injected from the electricity production system or grid

Greek Supreme Court: Ruling on the Special Solidarity levy

- Further on,
  - Having PPAs concluding the sale of electricity at the price fixed by law does not mean it is tax-free and can not be held that the provisions of Art. 4093/2012 are in breach with Art. 5 para. 1 of the Constitution, while not violating the constitutional principle of legitimate expectations of the citizen to the state
  - The reasoning arguing an infringement of the provisions of Arts 15, 16 and 17 of the Charter of Fundamental Rights of the European Union on freedom of occupation and the right to work, free enterprise and the right to property is rejected as having no legal ground
  - The levy is traced back on electricity sales from 1.7.2012 and is not contrary to paragraph 2 of Art. 78 of the Constitution and "constitutes an acceptable restriction on the property within the meaning of Art. 1 of the First Additional Protocol to the European Convention on Human Rights

Recent update on similar case law

- Ruling of the High Court in UK - *Breyer Group Plc & Ors v. Department of Energy & Climate Change*
  - 14 British solar and construction companies' victory against the Government claiming damages due to unlawful policy changes to FiT regime introduced in 2011
  - seeking £132 million in compensation from the Department of Energy & Climate Change / retrospectively introduced early cuts to the FiTs,
    - devastated the fledgling industry
    - lead to chaotic trading conditions,
    - shattered consumer confidence
    - thousands of redundancies
- The £132 million claim reflects the extent of commercial damage inflicted by the Government's policy mismanagement in 2011
- The exact damages awarded will be decided according to the value of contracts lost as a result of the Governments illegal actions.
- **Novel case for the solar industry for 2 reasons:**
  - Human rights violations introduced in relation to compensation for commercial losses suffered by solar firms
  - contracts for solar projects relying on FiTs qualified as "possessions"

New Deal – Applicable Framework

- Law 4254/2014 introduces radical changes in the RES regulatory framework
  - Comes to replace permanently the special solidarity levy (shortly before the expiration of the measure's duration)
  - New FiT reductions, depending on:
    - the technology used,
    - the time of project development,
    - the cost of the installation,
    - the location (differentiation between projects in mainland Greece and in smaller electricity grids e.g. Greek islands)
    - additional form of aid granted (e.g. in terms of a direct subsidy, tax exemption) → FiTs for projects receiving such aids face even sharper cuts
  - Removal of the suspension for PV projects*
  - 20 % up to 37,5 % contribution of the energy producers' income as a discount towards the Electricity Market Operator, depending on the date of electrification of the respective projects**
  - Seven year extension of the duration of the PPAs (counterbalance for the significant reduction of the FiTs)

Conclusions

- Global warming = straightforward argument for the policy objective of curbing GHG emissions

⇨ EU is so far the only geopolitical region that has adopted a binding unilateral GHG emission reduction target for 2020

- Energy security
- Strategic technological innovation
- Renewable energy quotas
- Energy efficiency targets
- Success factor to reach 2020 targets: the implementation of effective and efficient policies, which
  - promote high project success rates
  - attract sufficient investments
  - reduce administrative and grid-access barriers
  - upgrade the power grid infrastructure

CONCLUSIONS

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!!! multiple instruments are likely to create excess costs

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- Energy sector constitutes a cornerstone for economic development on a national and Community basis
- The EU has to intervene with binding measures when Member States expand their margin of discretion to hinder the realization of sustainable energy transitions
- On a national level Member States need to implement a consistent EU energy policy especially at times of recession so as to facilitate the achievement of the EU targets for 2020 and beyond – taxation policy should not constitute a barrier
- The **Greek case**: recession is assessed with a background of a highly **unstable political environment** and a governance characterized by chronic systemic problems of **corruption**, **bureaucracy**, **anti-reform mentality** and **lack of central planning**
- The new austerity measures & severe taxation policy
  - ⇨ no liquidity & restricted investment incentivisation
  - ⇨ no positive forecast for progress in the energy sector,

  unless…incentives are given to investors…
- Urgent need for a consistent, stable, regulatory framework incentivizing capital investment for a large scale penetration of RES in the energy mix

Thank you for your attention!

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