

The Energy Community, an international organization dealing with energy policy, was established by an international law treaty in October 2005 in Athens, Greece. The Energy Community member countries are EU member states and Albania, Bosnia and Herzegovina, FYR Macedonia, Moldova, Montenegro, Serbia, Kosovo (the United Nations Interim Administration Mission in Kosovo) and Ukraine.

The main objectives of the Energy Community are to create a common legal and regulatory framework for the energy markets that would provide secure and sustainable energy supply and could attract new investments in the entire energy sector. The goals of the Energy Community also include the development of alternative routes of energy and gas supply and improvement of the environment, while promoting energy efficiency and the use of renewable energy.

By joining the Energy Community and signing the Stabilization and Association Agreement in 2008 Serbia committed to the adoption of the EU regulations regarding the competition and state aid. These regulations prohibit any state aid that disrupts or threatens to disrupt the competition by giving the advantage and favoring certain companies or energy resources.

Such state aid within the energy sector was the subject of this research. The Client Earth, organization dedicated to the protection of the environment, ordered the research with the aim to investigate if any form of state aid was provided to both the Mining Basin Kolubara and the construction of the new facilities within the Thermal Power Plant Kolubara B.

Research methodology

Methodology for this research included the desk research and analysis of media archives, interviews with energy experts and 'insiders', as well as the official questions and requests for information of public importance (FOI requests) directed to the Ministry of Energy of Republic of Serbia (MoE), Government of Serbia, Electric Power Industry of Serbia and National Assembly of Republic of Serbia. The research was conducted within the period from September 25 to November 1, 2013.

The research was focused on investigation of all forms of the state aid provided to the Mining Basin Kolubara and Thermal Power Plant Kolubara B within the period from 2006 to date, including both national and local government budget funds, as well as the Government's funds and agencies. The investigation of the state aid also included bank guarantees, direct grants, tax exemptions, subsidies, loans, expropriation, land transfer taxes and other forms of state aid.

Media research included investigation and analysis of media archives, relevant articles and reports related to the subject of the research. Ebart media archives and online news portals

were used as main sources of information for this part of the research.

Investigation also included interviews with prominent energy experts, as well as with the insiders from the EPS. These interviewees provided some insights into the state aid related to specific loans, and general suggestions regarding the potential interlocutors and sources of information.

Official written questions (FOI requests) directed to the Government, Ministry of Energy and the EPS, as well as the research of relevant laws adopted by the National Assembly of the Republic of Serbia through the Open Parliament online portal (www.otvoreniparlament.rs), proved to be the most reliable investigative methods within the research.

Research findings

The research showed that, since 2006, the Republic of Serbia provided the state aid to the Company for Coal Production, Processing and Transport – Mining Basin Kolubara Ltd. Lazrevac¹ (MB Kolubara), and for the construction of the Thermal Power Plant Kolubara B (both are part of the public enterprise “The Electric Power Industry of Serbia”² – EPS).³ These included state guarantees for loans from the European Bank for Reconstruction and Development (EBRD) and guarantees for both loans and grants from the German Development Bank KfW⁴.

Also, the Serbian Government provided support to the EPS within the process of construction of the Thermal Power Plant Kolubara B by transferring to this public company the ownership of buildings and the property. The state aid was also provided in the form of direct grants for EPS from KfW – German government-owned development bank.

According to the official response from the Ministry of Energy (Appendix 1), the state aid provided to the MB Kolubara and Thermal Power Plant Kolubara B consisted of state guarantees for loans, transfer of assets and direct grants for three projects:

1) The first of these projects – “Procurement of the ECS System” was related to the procurement of the specific equipment (ECS system – excavator, conveyor, spreader system)⁵ for the West Tamnava coal mine. The mine is owned and operated by the MBasin Kolubara. The European Bank for Reconstruction and Development – EBRD financed this project with the loan of 52 million euro (Appendix 1).⁶

The research team did not acquire the Law on Ratification of the Loan Agreement Between the Republic of Serbia and the EBRD regarding this project within the research period.⁷

Further, within this project, the State issued guarantee for German Development Bank KfW which also funded procurement of ECS system in two forms. First, with the loan of 25 million euro and second with a direct grant in the amount of 9 million euro.

In the official written letter from the MoE the guarantee for the loan and grant were categorized as state aid. Thus, we assumed that the National Assembly adopted corresponding legislature, similarly to other cases of state guarantees. However, the research team was not able to get possession of the Act about Ratification of Loan Agreement between the Republic of Serbia and the German Development Bank KfW within the research period.⁸

The direct grant in the amount of 9 million euro given by KfW should also be considered as a state aid as KfW is a German government-owned development bank.

2) The project to which according to the MoE state aid was provided, is "Improvement of the Environment of the Mining Basin Kolubara"⁹. It was also funded by both EBRD and KfW. Specifically, EBRD provided loan of 80 million euro and KfW loan of 64 million euro and grant in amount of 9 million euro. As previously stated, in the official response by the MoE it is clear that they consider both guarantees for loans and grants as state aid.

According to the Guarantee Agreement between the Republic of Serbia and the European Bank for Reconstruction and Development (Appendix 2, dated on July 28, 2011, Official Gazette 8/2011)¹⁰, amount of the EBRD loan to the EPS for the "ECS system" was 80 million euro and the guarantee was issued for that amount.

The Act about Ratification of Loan Agreement between the Republic of Serbia and the German Development Bank KfW, dated on December 24, 2012, Official Gazette 121/2012)¹¹, related to the loan and grants for the improvement of the environment of the Mining Basin Kolubara, refers to the value of 74 million euro provided for these purposes (i.e. 65 million euro worth loans and 9 million euro worth grants).

It is important to note that in the official information provided by the MoE regarding funding of this project from the KfW share, value of the loan was 64 million euro, against 65 million euro stated in the Act.¹² The agreement was signed on 12 October 2012, while Serbian parliament ratified the agreement on 24 December 2012.

Regarding media reporting, the research team found media reports related to the loan provided by the EBRD and the German Development Bank KfW for the ECS system. On July 27, 2011 Beta news agency confirmed that the EBRD provided the EPS with the loan of 80 million euro, as published at the B92 online news portal.¹³

On October 12, 2012 an online news portal B92 reported¹⁴ about the Agreement between the EPS and the German Development Bank KfW for the 65 million euro worth loan and 9 million euro worth grants for implementation of the project "Improvement of the environment of the Mining Basin Kolubara". Two months later, on December 24, 2012 business portal E-kapija reported¹⁵ that the National Assembly of the Republic of Serbia

approved of the state's guarantees for the EPS of Serbia's debt in the amount of 74 million euro (65 million euro worth loan and 9 million euro worth grants from KfW).

3) Beside these two projects, the Ministry of Energy stated, in its official written response, that additional kind of state aid was provided through supporting the construction of the Thermal Power Plant Kolubara B.¹⁶ According to the Amendment to the EPS Establishment Act, dated on May 31, 2009, the Government of the Republic of Serbia transferred to this public company the ownership of the property (land and buildings) needed for the implementation of the Kolubara B project. In 2012, the Government of the Republic of Serbia also provided the Letter of Support for implementation of this project.¹⁷

EPS responded to CRTA FOI request on 1 November 2013 disclosing detailed list and the value of the property that was transferred to the EPS by the Serbian Government.

The value of the property (land and buildings) transferred, according to present market prices, is RSD 1.4 billions (12,7 millions euro, as per exchange rate on 18 November 2013).

The property in question was transferred to the EPS by the Government of Serbia's Decision on the Amendments to the Decision on the establishment of the public enterprise for production, distribution and trade of electricity – Official Gazette No 54/2010.¹⁸

Ministry of Energy provided the research team with information that the funds required for the expropriation of land necessary for the expansion of coalmines were provided from the EPS resources, according to the Investment Plan.¹⁹

Also, the Ministry of Energy responded that MB Kolubara purchases construction land from municipalities of Lazarevac, Ub and Lajkovac. The Ministry of Energy officially stated that the Mining Basin Kolubara didn't receive any subsidies, nor any tax exemptions.

Conclusion

With regard to the state aid for the Mining Basin Kolubara and construction of the Thermal Power Plant Kolubara B, the research showed that state aid was provided and it included guarantees for loans and direct grants approved by the National Assembly of the Republic of Serbia, through direct grants from German bank KfW and through property (land and buildings) ownership transfers to the EPS, within the period from 2006 to date.

Specifically, the list of state aid forms are:

1. State guarantee for amount of 52 million euro for EBRD loan ("Procurement of the ECS System" -;
2. State guarantee for amount of 34 million euro (25 million euro of loan and 9 million euro of direct grant) for KfW loan and direct grant ("Procurement of the ECS System";
3. Direct grant from KfW in the amount of 9 million euro;
4. State guarantee for amount of 80 million euro for EBRD loan ("Improvement of the

Environment of the Mining Basin Kolubara” , ;

5. State guarantee for amount of 74 million euro (65 million euro of loan and 9 million euro of direct grant for KfW loan and direct grant (“Improvement of the Environment of the Mining Basin Kolubara” ,;

6. Direct grant from KfW in the amount of 9 million euro;

7. Transfer of assets (land and buildings) of value of 12,7 millions euro from Government of Serbia to the EPS, supporting the construction of the Thermal Power Plant Kolubara B. According the Ministry of Energy the project “Procurement of the ECS System” the state issued the guarantees for 52 million loan from EBRD and 25 million loan with a grant in the amount of 9 million euro from The German Development Bank KfW

Also, the project “Improvement of the environment of the Mining Basin Kolubara”, was funded by the EBRD loan of 80 million euro and by the German Development Bank KfW loan of 65 million euro and 9 million euro worth grants. The MoE provided different information on the value of the loan from the KfW, which is according to them 64 million.

Along with these loans, the Ministry of Energy stated in its official written response that support for the construction of the Thermal Power Plant Kolubara B was provided by the state as well. According to the Amendment to the EPS Establishment Act, dated on May 3, 2009, the Government of the Republic of Serbia transferred to this public company the ownership of the property (land and buildings) needed for the implementation of the Kolubara B project.

Information obtained through research and investigation of this issue could significantly influence the construction of the Thermal Power Plant Kolubara B. Information about the state aid to the Mining Basin Kolubara and the construction of the Thermal Power Plant Kolubara B indicate the possibility of violations of the Article 18 and the Article 19 of the Treaty establishing the Energy Community related to the competition. Following these findings, it could be investigated if similar developments in providing state aid existed with regard to construction of other Power Plants in Serbia.

Source; Crta.rs