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Greenpeace submission on: State Aid SA.38454 (2015/C) – Hungary - Possible aid to the Paks nuclear power station – (C(2015) 8227 final)

1. Introduction

Greenpeace welcomes the opportunity of submitting comments on the measure notified by the Hungarian authorities (the notified measure), illustrated in the Commission letter to the Hungarian authorities of 23 November 2015 (the Commission letter).¹

Greenpeace notes that, in the said letter, the Commission *“has come to the preliminary conclusion that there are doubts that the development of two new nuclear reactors in Hungary that are fully financed by the Hungarian State during construction for the benefit of the entity Paks II, that will own and operate them, does not entail State aid within the meaning of Art 107(1) TFEU.”*²

The Commission also stated that *“[a]t this stage, based on the information submitted, the Commission does not have sufficient elements to conclude whether the conditions for the compatibility of any possible aid with the internal market in accordance with Article 107(3)(c) TFEU are met, in particular whether the aid is necessary. Furthermore, the Commission has doubts that the notified measure is proportionate. It is also concerned about its distortive effects on competition.”*³

The submission focuses on the assessment of the notified measure. Greenpeace considers that, if found to be State aid, such measure would not be compatible with Article 107(3)(c) TFEU and, therefore, should not be authorised.

¹ Official Journal of the European Union, C 8, 12 January 2016, page 2.

² Commission letter, para. 146.

³ Id., para. 147.

Greenpeace notes that, on the basis of the Commission's initial assessment, it is very difficult for interested parties to fully articulate their observations on the legality of the notified measure.⁴ Therefore, Greenpeace calls on the Commission, once it will have determined that the Hungarian investment in Paks II constitutes aid within the meaning of Article 107(1), to publish in the Official Journal a new decision setting out its preliminary assessment under Article 107(3)(c) and to allow interested parties to submit additional comments.⁵

2. On the assessment of the aid

Greenpeace's comments examine the following aspects of the notified measure:

- i) the failure to identify an objective of common interest,
- ii) the incompatibility with EU law due to the violation of Article 8 of Directive 2009/72/EC (the Electricity Directive),⁶
- iii) the incompatibility with EU law due to the violation of the EU Public Procurement Directives,⁷ and,
- iv) the impact of the aid on competition in the Hungarian electricity market.

⁴ The compatibility assessment in the Commission letter is limited to four pages, providing extremely limited information on the objective of the notified measure, the incentive effect, the appropriateness of the instrument, proportionality and the overall balancing. By contrast, the preliminary decision on the UK State aid to Hinkley Point C (C 2013 9073 of 18 December 2013) dedicated around forty pages to the assessment of the aid, which included an assessment of market failures, which is entirely absent from the Commission letter.

⁵ Greenpeace recalls, in this regard, that pursuant to Article 4(4) of Regulation (EU) 1589/2015, laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, "[w]here the Commission, after a preliminary examination, finds that doubts are raised as to the compatibility with the internal market of a notified measure, it shall decide to initiate proceedings pursuant to Article 108(2) TFEU ('decision to initiate the formal investigation procedure')" and that, in accordance with Article 6(1) of the said Regulation "[t]he decision to initiate the formal investigation procedure shall summarise the relevant issues of fact and law, shall include a preliminary assessment of the Commission as to the aid character of the proposed measure and shall set out the doubts as to its compatibility with the internal market. The decision shall call upon the Member State concerned and upon other interested parties to submit comments within a prescribed period which shall normally not exceed 1 month. In duly justified cases, the Commission may extend the prescribed period." (Emphasis added). Official Journal of the European Union, L 248, page 9.

⁶ 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, in Official Journal of the European Union, L 211 of 14 August 2009, page 55.

⁷ Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors and Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts

2.1 Objective of common interest

In its letter, the Commission notes that Hungary has not put forward any compatibility argument for the notified measure, including those related to the objective of common interest that the said measure must pursue in accordance with Article 107(3)(c) TFEU.⁸

The Commission however notes that Hungary “*claimed that projections of demand growth and the retirements of existing generation capacity show that there is a need for 5.5 GW of new generation capacity in Hungary by 2024 and 7.3 GW by 2030. Hungary claims that, therefore, Paks II contributes to a certain extent to ensure security of supply.*” According to the Commission “[i]t might, therefore, be argued that the measure aims at pursuing the objective of security of supply.”⁹

Greenpeace accepts that the construction of new generation capacity might contribute to the EU security of supply. However, and as it will be further explained in paragraph 2.3, below, EU law requires Member States to comply with a precise set of substantive and procedural rules, detailed in the Electricity Directive, in order to prevent gaps in generation capacity. Hungary has adopted the notified measure in violation of these rules. As a consequence, the notified measure is incompatible with the Treaty.

The Commission also notes that the notified measure entails specific support for nuclear technology and, in this regard, it puts forward that “*the Euratom Treaty establishes in Art 2(c) that the Community shall “facilitate investment and ensure, particularly by encouraging ventures on the part of undertakings, the establishment of the basic installations necessary for the development of nuclear energy in the Community.” Art 40 of the same Treaty envisages the Community publishing of illustrative programs “to stimulate investment, indicating production targets.” The Commission concludes that “[t]he measure envisaged by Hungary aimed at promoting nuclear energy could, therefore, be viewed as pursuing an objective of common interest*”.¹⁰

Greenpeace rejects this conclusion: in our opinion, the provisions of the Euratom Treaty to which the Commission refers do not provide for a sufficient legal basis to justify the authorisation of State aid in support of the construction of new nuclear installations. In particular, Article 2(c) Euratom clearly indicates that “*the establishment of basic installations for the development of nuclear energy*” should be achieved consistently with the functioning of a competitive market, in particular by “*ventures on the part of undertakings*”, not via the direct intervention by the State. Furthermore, the said provision does not refer, as the Commission seems to interpret it, to “*plants for the production of nuclear energy*” but to “*basic installations*” for the development of this energy source.

⁸ Commission letter., para. 123.

⁹ Id., para.124.

¹⁰ Id., paragraphs 126 and 127.

Given that nuclear technology is now mature, after benefiting from decades of public support, it is unreasonable to assume that the Euratom Treaty could, *per se* and without taking into account the evolution of the economic and legal context, justify additional subsidies.

Greenpeace further points out that, already in 1997, the Commission has ceased indicating nuclear production targets in the illustrative programmes based on Article 40 Euratom. The 1997 illustrative programme proposed, instead, a set of common principles to guide the action of the Community in the field of nuclear energy:¹¹

1. “The right to decide to develop or not the peaceful use of nuclear energy belongs to each Member State;
2. The choice made in this regard by any of the Member States has to be respected;
3. Member States having chosen to use nuclear energy need, in parallel, to ensure a high degree of nuclear safety, respect non-proliferation requirements as provided for in relevant international agreements, as well as a high level of human health protection;
4. While it is individual Member States who are responsible for setting safety standards and licensing nuclear installations and national operators who are responsible for their safe operation, both share the collective responsibility towards all European citizens for ensuring nuclear safety.”

Since the main Euratom document related to nuclear investments acknowledges that the choice of developing (or not developing) nuclear energy is a national one, in light of the divergent approaches of EU Member State, it does not seem plausible to qualify the construction of new nuclear capacity as a common EU objective, neither in general nor for the purpose of State aid authorisation.

These conclusions are upheld in the 2007 PINC¹² and the subsequent 2008 update,¹³ adopted at the time when the Commission defined the 2020 climate and energy package. These documents are currently in force. The 2007 PINC restates that it is “*for Member States to use nuclear energy or not*”¹⁴ and considers that “*the future of nuclear energy in the EU depends primarily on its economic merits, its capacity to deliver cost-efficient and reliable electricity to help meet the Lisbon goals, its contribution to the shared electricity policy objectives, its safety, its environmental impact and its social acceptability.*”¹⁵ (Emphasis added)

¹¹ Communication from the Commission on the nuclear industries in the European Union (an illustrative nuclear programme according to Article 40 of the Euratom Treaty), COM (1997) 401 final, page 34. It should be underlined that the 1997 illustrative programme is the first one that was adopted after the Chernobyl accident, which led to the phase-out of nuclear in Italy, and after the accession of Austria to the EU.

¹² COM(2007) 565 final.

¹³ COM (2008) 776 final.

¹⁴ 2007 PINC, para. 7, page 23.

¹⁵ Id., para. 2.3, page 5.

With regard, in particular, to the use of State aid to support nuclear investments the Commission underlined, in the 2008 update, the importance “to ensure in the EU that nuclear energy projects do not benefit from any State subsidy.”¹⁶

Greenpeace is aware that the Commission is preparing a new PINC. A draft has been unofficially circulated and has been widely reported by the press.¹⁷ From what has been reported, the Commission continues to consider the choice of using nuclear energy an internal issue for Member States to decide.

Greenpeace is aware that the Commission has authorised the UK to subsidise the construction of two nuclear reactors at the Hinkley Point nuclear power plant, relying on the Euratom Treaty in order to demonstrate that the UK measure was aimed at an objective of common interest.¹⁸

In this regard, however, Greenpeace notes that two actions for annulment are currently pending before the European Court of Justice (the CJEU) against that decision and that one of the grounds on which such actions are based is, precisely, the Commission’s failure to correctly identify the common objective pursued by the State aid.¹⁹

The Commission should acknowledge that, pending the judgement of the CJEU, there is a degree of uncertainty on whether it could validly refer to the Euratom Treaty as the sole legal basis to justify State aid to the construction of new nuclear plants.

It is in any case clear that the Euratom Treaty must be interpreted consistently with the other EU law provisions, notably those on environmental protection (Articles 191 and 192 TFEU) and on energy (Article 194 TFEU), as well as with the secondary legislation implementing such provisions. Thus, as it will be explained in the following paragraph, a Member State cannot be authorised to subsidise the construction of a nuclear power plant when the aid measure would lead to the violation of the EU rules governing the construction of new generation capacity (Article 8 of the Electricity Directive).

2.2 On Hungary’s violation of Article 8 of the Electricity Directive

2.2.1 Member States’ obligations under Article 8 of the Electricity

As noted in Paragraph 2.1, Hungary has put forward that the notified measure has the objective of filling a gap in generation capacity. The Hungarian government considers that 5.5 GW of new generation capacity will have to be built by 2024 and 7.3 GW by 2030.

¹⁶ 2008 update, page 10.

¹⁷ <http://www.energypost.eu/exclusive-eu-paints-challenging-picture-europes-nuclear-future/>

¹⁸ Commission Decision (EU) 2015/658 of 8 October 2014 on the aid measure SA.34947 (2013/C) (ex 2013/N) which the United Kingdom is planning to implement for support to the Hinkley Point C nuclear power station, in Official Journal of the European Union, L 109 of 28 April 2015, page 44.

¹⁹ See: Action brought on 6 July 2015, Austria v Commission (Case T-356/15), fourth plea in law. See also: Action brought on 15 July 2015, Greenpeace Energy and Others v Commission (Case T-382/15), first plea in law. The notices for both cases are published in the Official Journal of the European Union, C 337, respectively at page 14 and 22.

The Electricity Directive specifies how Member States are required to deal with gaps in generation capacity such as those represented by the Hungarian authorities.

In accordance with Article 4 of the Electricity Directive, *“Member States shall ensure the monitoring of security of supply issues.”* The same provision says that *“[s]uch monitoring shall, in particular, cover the balance of supply and demand on the national market, the level of expected future demand and envisaged additional capacity being planned or under construction, and the quality and level of maintenance of the networks, as well as measures to cover peak demand and to deal with shortfalls of one or more suppliers”*. It also states that *“[t]he competent authorities shall publish every two years, by 31 July, a report outlining the findings resulting from the monitoring of those issues, as well as any measures taken or envisaged to address them and shall forward that report to the Commission forthwith.”*

Member States are therefore under an obligation to monitor security of supply and to keep the Commission informed of the situation in their national markets and of the initiatives they intend to adopt in view of addressing potential issues. State intervention on the market should, as a matter of principle, take place in the framework of these monitoring and information procedures. We cannot verify whether Hungary has complied with these procedures, but request that the Commission verifies whether all provisions have been met.

In any case, assuming that Hungary’s estimate is correct, EU law imposes precise substantive and procedural requirements on Member States that decide to address forecasted gaps in electricity generation capacity.

In accordance with Article 8 (1) of the Electricity Directive, *“Member States shall ensure the possibility, in the interests of security of supply, of providing for new capacity or energy efficiency/demand-side management measures through a tendering procedure or any procedure equivalent in terms of transparency and non-discrimination, on the basis of published criteria.”*

Provided that *“on the basis of the authorisation procedure [in Article 7 of the Electricity Directive], the generating capacity to be built or the energy efficiency/demand-side management measures to be taken are insufficient to ensure security of supply”*,²⁰ Article 8 of the Electricity Directive allows (and requires) Member States to intervene in the electricity generation market with measures aimed at ensuring security of supply.

²⁰ Hungary has not provided evidence to show that the authorisation procedure under Article 7 would be insufficient to ensure security of supply via the provision of new generation capacity, energy efficiency or demand-side management measures.

However, Member States cannot (as Hungary intends to do) simply decide to subsidise the construction of a nuclear power plant. On the contrary, they must launch open, transparent and non-discriminatory tendering procedures, in accordance with the requirements listed in Article 8(3) of the Electricity Directive. In particular:

- Details of the tendering procedure for means of generating capacity and energy efficiency/demand-side management measures must be published in the EU Official Journal at least six months prior to the closing date for tenders;
- The tender specifications must be made available to any interested undertaking established in the territory of a Member State so that it has sufficient time in which to submit a tender;
- With a view to ensuring transparency and non-discrimination, the tender specifications shall contain a detailed description of the contract specifications and of the procedure to be followed by all tenderers, and an exhaustive list of criteria governing the selection of tenderers and the award of the contract;
- In invitations to tender for the requisite generating capacity, consideration must also be given to electricity supply offers with long-term guarantees from existing generating units, provided that additional requirements can be met in this way;
- Most importantly, the tender specifications must contain a description of any incentives, such as subsidies, which are covered by the tender.²¹

The following ensues from the text of Article 8 of the Electricity Directive:

- i) Any incentive (including State aid in the form of debt or equity) for the construction of new generation capacity must be given only when it is demonstrated that the authorisation procedure under Article 7 does not guarantee security of supply;
- ii) Any of the above incentives must be allocated following a procedure compliant with the Article 8 requirements ;
- iii) Compliance with the Article 8 requirements, aimed at ensuring transparent, non-discriminatory and undistorted access to the generation market of a Member State, is a condition for the compatibility of State Aid to the construction of new generation capacity.

To conclude differently would be tantamount to saying that Member States can choose to opt-out from common rules governing the internal electricity market, which have been adopted by the EU legislator and are, as per Article 288 TFEU, binding upon Member States.

²¹ Incidentally, it should be noted that the notion of “incentives” appears to be wider than that of State aid. This means that Article 8 would apply to any investment made by a Member State to build new generation capacity, even if justified under the MEIP principle. In other word, a Member State that intends to make equity available for the construction of new power plants, should select the investments on the basis of a tender procedure under Article 8.

As will be further developed in the following section, these views are supported by the case law of the CJEU.

2.2.2 State aid in violation of EU law is incompatible with the Treaty

According to a long standing jurisprudence of the CJEU, “it is clear from the general scheme of the Treaty that the procedure under Article [108 TFEU] must never produce a result which is contrary to the specific provisions of the Treaty. State aid, certain conditions of which contravene other provisions of the Treaty, cannot therefore be declared by the Commission to be compatible with the common market.”²²

The obligation on the part of the Commission to ensure that Articles 107 and 108 TFEU are applied consistently with other provisions of the Treaty is all the more necessary where those other provisions also pursue the objective of undistorted competition in the internal market.²³

The above principle apply when “those aspects of aid which contravene specific provisions of the Treaty other than Articles [107] and [108] may be so indissolubly linked to the object of the aid that it is impossible to evaluate them separately (...). Specifically, the Court has held that, where this is so, the effects of those aspects on the compatibility or incompatibility of the aid as a whole must be assessed by means of the procedure under Article [108] of the Treaty. The position is different, however, if it is possible when an aid programme is being analysed to separate those conditions or factors which, even though they form part of the programme, may be regarded as not being necessary for the attainment of its object or for its proper functioning.”²⁴

2.2.3 The notified measure, adopted in violation of Article 8 of the Electricity Directive, is incompatible with the Treaty and cannot be authorised

The case law quoted in the previous paragraph is relevant in the present case. Indeed:

(1) The notified measure contravenes the Electricity Directive and other provisions of the Treaty

As previously explained, should the Commission authorise the notified measure, Hungary would inevitably violate Article 8 of the Electricity Directive (which is based on Articles 53, 62 and 114 TFEU). The Hungarian authorities have not followed a transparent and non-discriminatory tender (or equivalent) procedure to identify the recipient of the aid. On the contrary they have selected Paks II on the basis of an international agreement concluded with Russia.

²² Judgement of the Court of 29 September 2000, Case C-156/98, *Germany v. Commission*, ECR [2000] I-6882, para. 78. See also: Judgement of the Court of 3 May 2001, Case C-204/97, *Portugal v. Commission*, ECR [2001] I-3204, paragraph 41, and, recently, Order of the President of the General Court of 17 February 2011, Case T-520/11, *Comunidad Autónoma de Galicia v. Commission*, paragraph 54.

²³ Judgment of the General Court of 9 September 2010, Case T-359/04, *British Aggregates Associations v. Commission*, ECR [2010] II-4227, paragraph 91.

²⁴ Judgment of the Court of First Instance of 31 January 2001, Joined cases T-197/97 and T-198/97, *Weyl Beef Products and others v Commission*, ECR [2001], II-303, paragraphs 76 and 77. See also, Judgment of the Court of 22 March 1977, Case 74/76, *Iannelli v Meroni*, ECR [1977] 557, paragraph 14.

(2) The Electricity Directive also pursues the objective of undistorted competition in the internal market

The objective of the Electricity Directive is the creation of a fully operational internal electricity market.²⁵ From a general standpoint, it ensures the full application of the internal market principles (including undistorted competition) to electricity generation in the EU. Aid granted in this sector must therefore not contradict the Directive's provisions.²⁶

In the specific case, the tendering rules of Article 8 aim at guaranteeing that all market operators enjoy equal opportunities to access a Member State's market. They seek to mitigate the restrictions that are inherent in public interventions for the provision of new generation capacity, by replacing competition in the market with competition for the market, based on non-discriminatory and transparent conditions.

There is no doubt that, by selecting the contractor (and therefore the recipient of the aid) without complying with the procedural requirements set out in Article 8, Hungary has precluded all other EU operators from competing for a very relevant share of its national generation market,²⁷ violating the transparency and non-discrimination principles.

(3) The aspect of aid which contravenes the Electricity Directive (and Articles 53, 62 and 114 TFEU) is indissolubly linked to the object of the notified aid (the construction and operation of the new generating units at PAKS II) and it is a necessary condition for the attainment of such object.

The notified aid measure has the stated objective of supporting a specific undertaking, i.e. PAKS II, in the construction and functioning of a specifically identified infrastructure (the two new reactors at the PAKS nuclear power station). In fact, Hungary seems to have specifically designed the aid measure to achieve that objective. Therefore, it seems unreasonable to question that Hungary would implement the notified measure only if directed at supporting PAKS II to the exclusion of any other EU undertaking interested in

²⁵ Electricity Directive, Recital 62.

²⁶ The Commission precedent in the Hinkley Point C case confirms this analysis: in the decision opening the in-depth investigation, at para. 330, the Commission had pointed out that *"the lack of a tender could also lead to violation of Article 8 of the Electricity Directive 2009/72/EC"* and asked clarifications in this respect. http://ec.europa.eu/competition/state_aid/cases/251157/251157_1507977_35_2.pdf. In the decision of 8 October 2014, closing the investigation, the Commission effectively assessed whether the UK had complied with Article 8 of the electricity directive. Irrespective of the conclusions reached in the specific case, notably on the equivalence between the procedures followed by the UK and the tendering procedures mentioned by the Article 8, the Commission did not exclude the application of the provision and its relevance in the assessment of State aid cases (see footnote 17, above, at para 330).

²⁷ According to the Commission letter (paras. 12 and 13), the current PAKS nuclear power station produces around 50 per cent of the domestically generated electricity through its 2000MW of installed capacity. The two new reactors would add 1180MW of capacity each, with an increase of PAKS' overall capacity to 3000MW by 2025 and to 4000MW by 2032. PAKS' installed capacity would start progressively decreasing only in 2032, with the retirement of the first of the existing reactors.

building and exploiting new generation capacity in Hungary. In fact, the Hungarian government has not provided any evidence to the contrary.

It is therefore reasonable to consider that, had Hungary complied with Article 8 of the Electricity Directive and the Treaty provisions upon which it is based, it would have designed the aid measure differently from the one currently under scrutiny.

2.3 On the violation of the EU Public Procurement Directives.

The following results from the Commission letter:²⁸

1. On 14 January 2014, Russia and Hungary concluded an intergovernmental agreement (IGA) on a nuclear programme. The IGA foresees cooperation between the two countries in the further development of the Paks nuclear power plant, including the development of the Paks II project;
2. Pursuant to the IGA, both Russia and Hungary have designated one State-owned and State-controlled organisation which is financially and technically capable to fulfil its obligations as contractor/owner in relation to the project;
3. Russia has appointed Joint-Stock Company Nizhny Novgorod Engineering Company Atomenergoproekt (JSC NIAEP) to construct and Hungary has appointed the company Paks II to own and operate the two power units foreseen by the project;
4. On 9 December 2014, JSC NIAEP and Paks II concluded the Engineering, Procurement and Construction (EPC) contract for the two new nuclear reactors.

As outlined above, there is no doubt that the Hungarian state and/or its controlled company Paks II have awarded the EPC contract for the new nuclear reactors without following a transparent and non-discriminatory procedure, as required by the EU Public Procurement Directives.

The Commission is well aware of this fact. Indeed, on 19 November 2015, it decided to open an infringement procedure against Hungary, addressing the compatibility of the Paks II project with the above mentioned Directives.²⁹

Greenpeace submits that Hungary's failure to comply with EU public procurement law has the effect of determining the incompatibility of the notified measure with the internal market. Indeed, similarly to what has been observed in relation to the Electricity Directive, the aspect of aid which contravenes the Public Procurement Directives (and Articles 53, 62 and 114 TFEU) is indissolubly linked to the object of the notified aid. Such aspect is a necessary condition for the attainment of the aid's object.

²⁸ Commission letter, paragraphs 4 to 10.

²⁹ EU-Pilot 7718/15/GROW - NIF 2015/4231.

As the Commission clarified in para. 10 of the letter, “Russia undertook to provide Hungary with a state loan to finance the development of the Paks NPP. This loan is governed by a Financing Intergovernmental Agreement (the Financing IGA) and provides a revolving credit facility of EUR 10 billion which is limited to be used solely for the designing, construction and commissioning of power units 5 and 6. Hungary will directly finance the investments of Paks II necessary for the designing, construction and commissioning of power units 5 and 6 as set out by the Financing IGA.” (Emphasis added).

In other words, Hungary has never had the option of implementing the notified measure while complying with the EU Public Procurement Directives. Had it decided to do so, opening the possibility that an undertaking different from JSC NIAEP be awarded with the EPC contract, it would have lost the state loan made available by Russia through the Financing IGA.

This means that the violation of above mentioned Directives is not only indissolubly linked to the aid, but to Paks II: worse still, the violation is an essential requirement for the implementation of the measure. Consequently, the Commission cannot declare the notified measure compatible with the internal market, given that a positive decision would be equivalent to authorising a Member State to deliberately violate EU law.

2.4 On the impact on competition in the Hungarian market for electricity generation

Pursuant to Article 107(3)(c) TFEU, State aid can be authorised only if it does not adversely affect trading conditions to an extent that is contrary to the common interest. In its letter, the Commission observed that the notified measure “*may restrict competition and affect trade in a number of areas.*”³⁰

In its preliminary assessment of the Hungarian electricity market, the Commission pointed out that “[t]he State retains a dominant position in the sector through the state-owned vertically integrated energy company MVM Group”, and that “[a]s a generator, MVM Group has a significant market presence, due to its main generation asset, Paks NPP which provided 53.6% of domestically generated electricity.”³¹

It also acknowledged that “*the MVM Group also plays a significant role in the total gross energy consumption due to its subsidiary Paks NPP*” and noted that Paks II “*will represent at least one third of expected demand in 2030*” and that “[t]he electricity generation by Paks I and Paks II at the same time, throughout its duration is likely to satisfy an even greater portion of the market demand”³²

³⁰ Commission letter, para. 141.

³¹ Commission letter, paragraphs 42 and 43.

³² Idem, para. 142.

Given these premises, Greenpeace submits that the Commission cannot authorise the aid without a thorough assessment of the effects of the notified measure on the Hungarian and EU electricity market, including:

- The foreseeable evolution of the Hungarian State's position on the market in the period that will follow the start of Paks II operation;
- The risks that the Hungarian State may reinforce and abuse its dominant position, against consumers and/or competitors, on the national electricity market;
- Possible crowding-out effects on investments in Hungary (particularly in renewables and energy efficiency);
- Possible obstacles to the intra-EU trade in electricity.

The fact that the benefits expected from the notified measure (i.e. the construction of new generation capacity) do not appear to outweigh the potential threats to the functioning of the internal energy market suggests that the notified measure is inconsistent with the proportionality principle.

In fact, it is unclear (and Hungary has not provided any evidence in this regard) whether the expected gaps in generation capacity will effectively materialise and whether the notified measure is the least restrictive measure to address these hypothetical gaps.

Notably, Hungary has failed to demonstrate that intra-EU electricity trade, energy efficiency/demand side response measures or technologically neutral tenders (which are mandatory, as explained in paragraph 2.2) would have been insufficient to guarantee security of supply.

Greenpeace remains available to provide additional clarifications and to further expand on the content of this submission

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