COMMISSION DECISION (EU) 2024/1274

of 29 April 2024

granting the Hellenic Republic a derogation from certain provisions of Regulation (EU) 2019/943 of the European Parliament and of the Council and of Directive (EU) 2019/944 of the European Parliament and of the Council, as regards the island of Crete

(notified under document C(2024) 2890)

(Only the Greek text is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity ([1]), and in particular Article 64 thereof,

Having regard to Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU ([2]), and in particular Article 66 thereof,

Whereas:

1. PROCEDURE

(1) On 21 February 2022, the Commission adopted Decision (EU) 2022/258 ([3]) granting to Greece a derogation from the following provisions of Regulation (EU) 2019/943 and Directive (EU) 2019/944, as regards the island of Crete:

(a) Article 6 of Regulation (EU) 2019/943, which sets out the rules applicable to electricity balancing markets;

(b) Article 7(1) of Regulation (EU) 2019/943, which refers to the organisation of the management of the integrated day-ahead and intraday markets by transmission system operators ('TSOs') and nominated electricity market operator ('NEMOs'), in accordance with Commission Regulation (EU) 2015/1222 ([4]);

(c) Article 8(1) and (4) of Regulation (EU) 2019/943, which, respectively, impose on NEMOs the obligation to allow market participants to trade energy as close to real time as possible and at least up to the intraday cross-zonal gate closure time and set out the imbalance settlement period to 15 minutes in all scheduling areas;

(d) Article 9 of Regulation (EU) 2019/943, which refers to forward electricity markets;

(e) Article 10 of Regulation (EU) 2019/943, which refers to technical bidding limits applicable to wholesale energy prices;

(f) Article 11 of Regulation (EU) 2019/943, which refers to the determination of the value of lost load, that is to say, an estimation of the maximum electricity price that customers are willing to pay to avoid an outage;

(g) Article 40(4) to (7) of Directive (EU) 2019/944, which set out certain responsibilities of TSOs including the procurement of non-frequency ancillary services.

([1]) OJ L 158, 14.6.2019, p. 54, ELI: http://data.europa.eu/eli/reg/2019/943/oj.
([2]) OJ L 158, 14.6.2019, p. 125, ELI: http://data.europa.eu/eli/dir/2019/944/oj.
([3]) Commission Decision (EU) 2022/258 of 21 February 2022 granting the Hellenic Republic a derogation from certain provisions of Regulation (EU) 2019/943 of the European Parliament and of the Council and Directive (EU) 2019/944 of the European Parliament and of the Council as regards Crete (OJ L 42, 23.2.2022, p. 92, ELI: http://data.europa.eu/eli/dec/2022/258/oj).
([4]) Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management (OJ L 197, 25.7.2015, p. 24, ELI: http://data.europa.eu/eli/reg/2015/1222/oj).

(2) The derogation granted in Decision (EU) 2022/258 applied until 31 December 2023 or until the island of Crete would be fully interconnected with mainland Greece, whichever came first.

(3) On 18 December 2023, Greece submitted to the Commission a new request for derogation (the 'Application') from the provisions referred to in recital 1 as regards the island of Crete. In the new request, Greece explained that, due to unforeseeable delays in the relevant construction and licencing processes, the full interconnection of the island of Crete could not take place by the end of December 2023 and requested a new derogation from those provisions until 31 December 2025 or the completion of the full interconnection of the island of Crete with mainland Greece, whichever would come first.

(4) On 28 February 2024, the Commission published the Application on its website and invited Member States and stakeholders to provide comments by 27 March 2024. Only one party submitted comments, which related to the installation of additional conventional generation capacity in Crete as well as the remuneration of such capacity. More specifically, the party raised concerns that the applicable remuneration scheme may not be compatible with the EU rules applicable to capacity mechanisms. For the avoidance of doubt, Greece has not requested a derogation from the EU rules applicable to capacity mechanisms, which means that those rules continue to apply to any remuneration schemes for generation capacity in Crete. Hence, the comments received are outside the scope of the present decision. In addition, the present decision is without prejudice to EU State aid law.

2. **THE ISLAND OF CRETE**

The electricity system and electricity market in the island of Crete

(5) The island of Crete is located in the Mediterranean Sea, south of the continental mainland of Greece. Until 3 July 2021, it had an autonomous power system, unconnected to the continental electricity system of Greece.

(6) As explained in recitals (6) to (9) of Decision (EU) 2022/258, Greece treated the full interconnection of the island of Crete with the mainland Greece as a priority project which was scheduled to be completed by the end of 2023and to materialise in two phases:

(a) phase I of the interconnection project, which relates to the interconnection of Crete with the Peloponnese peninsula (the 'Phase I interconnection') was completed on 1 November 2021;

(b) phase II of the interconnection project refers to the interconnection of the central part of Crete (Heraklion Prefecture) to mainland Greece (Attica region) (the 'Phase II interconnection'). Upon completion of the Phase II interconnection, the island of Crete is expected to be fully interconnected to the continental electricity transmission system and the electricity demand on the island is to be fully covered.

(7) Prior to the completion of the Phase I interconnection, the electricity market in Crete was such that producers and suppliers did not submit any bids in the Greek market and the generation units were dispatched according to their minimum variable costs. The wholesale clearing price for electricity in Crete was calculated on a monthly basis, based on the variable and total costs of the conventional power units, all of which belonged to the incumbent company Public Power Cooperation S.A. ('PPC S.A.'). PPC S.A. was the only conventional power generator on the island. In addition, there were several electricity producers from renewable energy sources ('RES') with a fixed tariff pursuant to a power purchase agreement or a fixed tariff depending on the date of the start of operation of each unit. The application of this model ceased once Phase I was completed (1 November 2021).

(8) For the transitional period between the completion of Phase I and the completion of Phase II, (the 'transitional period') a hybrid market model applies to the electricity market in Crete (the 'hybrid model'). Details of the operation of the hybrid model were set out in recitals 15 to 19 of Decision (EU) 2022/258.

(9) In sum, according to the hybrid model, the Greek electricity power exchange HEnEX submits orders for the entire load and thermal generation in Crete to both the day-ahead and intraday markets. Those submissions are made on behalf of all load representatives and thermal generators in Crete. All RES contracts have been transferred to the Operator of Renewable Energy Sources & Guarantees of Origin ('DAPEEP') by way of Ministerial decision and all relevant metering data for both existing and new RES in Crete are provided to DAPEEP by the Distribution System Operator ('HEDNO S.A.'). Simultaneously, DAPEEP submits orders for all RES generation in Crete. Based on those orders, the total electricity demand, as forecasted by the Greek Transmission System Operator ('IPTO S.A.'), is allocated to load representatives in accordance with their supply percentage ratio calculated *ex ante* on a monthly basis by HEDNO S.A.. Upon completion of that process, the complete load and generation profile of Crete are virtually introduced into the day-ahead and intraday markets of the Greek mainland interconnected system.

(10) According to the Application, the operation of the Phase I interconnection follows the economic signals of the price formation in the mainland interconnected system *vis-à-vis* the electricity market in Crete. Given that the costs for thermal electricity generation in Crete are high, the Phase I interconnection mostly imports electricity to Crete. However, this is not always the case. During periods of low load and high generation of electricity from RES in Crete, the flow on the cables of the Phase I interconnection reverses and electricity flows from Crete to the mainland. Greece explained that when that happens, any such electricity has been generated from RES, because all thermal generation is considered to serve the local load in Crete.

(11) Greece submitted that the hybrid model entered into force by way of the following national measures: Articles 105, 107 and 108 of Greek Law 4821/2021 and the national regulatory authority's (RAE) Decisions No 755/2021 and 807/2021.

(12) Greece further submitted that, for the transitional period, the hybrid model has proven to be the most suitable, efficient and effective market system for Crete compared to the two alternatives that were considered, namely the integration of Crete in the Greek electricity market through a single or two bidding zones respectively. In support of that statement, Greece submitted information demonstrating that the hybrid model has resulted in significant cost savings, the avoidance of excessive redispatching costs, lower costs of supplied electricity and the efficient use of less polluting technologies.

(13) In relation to the retail market, Greece submitted that it is open to all suppliers, with approximately fifteen currently active in the island of Crete. Given the fact that the generation costs in the island of Crete are higher than the costs of the Greek interconnected electricity system, Greece opted for the application by the suppliers of a single tariff for each category of customers throughout its entire territory. That decision was driven by reasons of social cohesion.

3. THE REQUESTED DEROGATION

(14) The request for derogation submitted for the island of Crete is based on its qualification as a small connected system within the meaning of Article 64(1), point (a), of Regulation (EU) 2019/943. This qualification was confirmed in recitals 36 to 40 of Decision (EU) 2022/258.

3.1. Derogation pursuant to Article 64 of the Regulation (EU) 2019/943

(15) Greece requested a new derogation for the island of Crete from Article 6, Article 7(1), Article 8(1) and (4) and Articles 9, 10 and 11 of Regulation (EU) 2019/943.

3.2. Derogation pursuant to Article 66 of Directive (EU) 2019/944

(16) Greece requested a new derogation for the island of Crete from Article 40(4) to (7) of Directive (EU) 2019/944.

3.3. Duration of the requested derogation

(17) Greece requested that the derogation be of equal duration as that of the transitional period, namely until the end of 2025, by which time Crete will be fully interconnected to mainland Greece. Greece clarified that while certain network upgrades on the island of Crete will be gradually taking place until the end of 2028, they will not jeopardise the completion and operation of the Phase II interconnection.

(18) In the Application, Greece submitted that, while full interconnection had been scheduled to be completed by the end of 2023, corresponding to the duration of the derogation granted in Decision (EU) 2022/258, the completion of the project has been delayed. According to the updated timeline submitted by Greece, full interconnection is due to be completed by the end of 2025. Greece explained that the project is experiencing substantial delays due to events which could not have been foreseen prior to the commencement of the construction works.

(19) More specifically, Greece submitted that the COVID-19 pandemic brought about considerable delays in the procurement of certain construction materials and services. In addition, the discovery of significant antiquities during the excavation works caused further delays, because the competent archaeological authorities had to be involved in the permitting processes, which were already ongoing. Greece also mentioned that the finding of karstic cavities in the underground area of the construction field meant that works had to be suspended until those cavities were assessed and dealt with sufficiently. Finally, the floods that took place in September 2023 caused further delays to the project as they affected the production process of the steel structure supplier of the converter station in Crete.

4. ASSESSMENT

4.1. Small connected systems whose operation poses substantial problems

(20) In accordance with Article 64 of Regulation (EU) 2019/943, a derogation from the relevant provisions of Articles 6, Article 7(1), Article 8(1) and (4), and Articles 9, 10 and 11 of that Regulation may be granted in two cases:

(a) for small isolated systems and small connected systems, if the Member State(s) can demonstrate that there are substantial problems for the operation of those systems, whereas in such a case, the derogation is to be subject to conditions that aim to increase competition and integration with the internal market for electricity;

(b) for outermost regions with the meaning of Article 349 of the Treaty, if they cannot be interconnected with the Union's energy market for evident physical reasons.

(21) In accordance with Article 66(1), first subparagraph, of Directive (EU) 2019/944, a derogation from the relevant provisions of Articles 7 and 8 and of Chapters IV, V and VI of that Directive may be granted for small isolated systems and small connected systems, if the Member State(s) can demonstrate that there are substantial problems for the operation of those systems.

(22) Both under Regulation (EU) 2019/943 and Directive (EU) 2019/944, in the case of small connected systems, Member States need to demonstrate that there are substantial problems for the operation of such systems. Moreover, the derogation should be limited in time and subject to conditions aiming to increase competition and integration with the internal electricity market.

Small connected system

(23) The qualification of the island of Crete as a small connected system was assessed in recitals 36 to 40 of Decision (EU) 2022/258. As that assessment is still valid, the island of Crete qualifies as a small connected system for the purposes of Article 64 of Regulation (EU) 2019/943 and Article 66 of Directive (EU) 2019/944.

Substantial problems for the operation of the system

(24) The term 'substantial problems' referred to in Article 64(1), point (a), of Regulation (EU) 2019/943 has been defined neither by the legislator nor by the Commission in its decision-making practice. The open formulation allows the Commission to take into account all potential problems related to the particular situation of small systems, provided they are substantial and not only marginal. Such problems can vary significantly depending on the geographical particularities, production and consumption of the system in question, but also on the basis of technical developments, such as electricity storage and small generation. Furthermore, those substantial problems need to be in relation to the operation of the small isolated systems and small connected systems.

(25) In the Application, Greece explained the problems it would encounter in operating the electricity system in Crete, were it to apply Regulation (EU) 2019/943 and Directive (EU) 2019/944 in their entirety during the transitional period. The full application of those legal acts would require the integration of Crete in the Greek electricity markets, through a single ('one-bidding zone scenario') or two bidding zones ('two-bidding zones scenario'). The related challenges as submitted in the Application referred to the same substantial problems that had been assessed by the Commission in Decision (EU) 2022/258.

(26) In sum, Greece highlighted problems for the operation of the electricity market in Crete, were Regulation (EU) 2019/943 and Directive (EU) 2019/944 to apply in their entirety.

(27) On the one hand, the integration of Crete's market participants into the Greek electricity market in the one-bidding zone scenario would cause high redispatching costs, which would have to ultimately be paid by the electricity consumers. In any event, metering infrastructure inadequacies would not allow the full participation of Crete market participants in the day-ahead, intraday and balancing electricity markets of Greece. In particular, the necessary metering systems are not in place and will not be before the first quarter of 2024.

(28) On the other hand, the creation of a separate bidding zone would not only necessitate additional infrastructure investments, which in any event would not be completed during the period of the requested derogation, but it would also appear to be unsuitable for reasons of overall market efficiency, stability and robustness of the bidding zone. Moreover, it would not be a proportionate solution either, considering the limited duration of the derogation.

(29) In the Application, Greece also provided certain updates to the information submitted prior to the adoption of Decision (EU) 2022/258. Among other things, it estimated that in the hypothetical one-bidding zone and two bidding zones scenarios, the total cost of electricity would, respectively, be approximately EUR 190 million and EUR 217 million higher compared to the actual cost in the context of the hybrid model for the period.

(30) It is therefore necessary to refer to the respective assessment in recitals 41 to 48 of Decision (EU) 2022/258 and to conclude that Greece has demonstrated that there are substantial problems for the operation of the electricity system in Crete as a small connected system, until the island is fully interconnected to the continental grid, that is to say, until Phase II of the interconnection project is completed.

(31) The temporary hybrid model currently applicable in Crete aims to address those problems and, for the reasons set out in recital 29, yields significant benefits compared to the full integration of the Crete's system into the Greek electricity market during the transitional period.

4.2. **Scope of the requested derogation**

4.2.1. *Article 6, Article 7(1), Article 8(1) and (4), Articles 9, 10 and 11 of Regulation (EU) 2019/943*

4.2.1.1. The Application

(32) With regard to Article 6 of Regulation (EU) 2019/943, Greece submitted that the hybrid model currently applicable in the island of Crete does not include a balancing market. Hence a derogation from that Article would be necessary for the hybrid model to continue to apply until the island of Crete is fully interconnected.

(33) With regard to Article 7(1) and Article 8(1) and (4) of Regulation (EU) 2019/943, Greece notes that the hybrid model as currently applicable in the island of Crete does not provide for day-ahead and intraday markets, or trades on either of these markets. Hence, according to Greece, a derogation from those Articles would be necessary for the hybrid model to continue to apply until the island of Crete is fully interconnected.

(34) Likewise, following on from what is set out in recital 33, Greece considers that the integration of forward markets, technical bidding limits and the value of lost load referred to in Articles 9, 10 and 11 of Regulation (EU) 2019/943 do not apply to the hybrid model in the island of Crete. Hence, according to Greece, a derogation from those Articles would be necessary for the hybrid model to continue to apply until the island of Crete is fully interconnected.

4.2.1.2. Assessment

(35) With respect to the requested derogation from Article 6, Article 7(1), Article 8(1) and (4) and Articles 9, 10 and 11 of Regulation (EU) 2019/943, those provisions refer to requirements regarding the forward, day-ahead, intraday and balancing markets. Based on the information submitted by Greece, it appears that those markets cannot be implemented effectively in the island of Crete considering the particularities of the electricity system currently applicable in that territory. Hence, a derogation from those provisions is justified.

4.2.2. *Article 40(4) to (7) of Directive (EU) 2019/944*

4.2.2.1. The Application

(36) Greece submitted that the hybrid model does not provide for a balancing market or market-based procurement of ancillary services. In order for the hybrid model to continue operating in the transitional period, a derogation from that Article would be necessary.

4.2.2.2. Assessment

(37) Given the absence of a balancing market and of a market-based procurement of non-frequency ancillary services in the island of Crete, a derogation from the obligations in Article 40(4) to (7) of Directive (EU) 2019/944 is justified.

4.3. **No obstruction to the transition towards renewable energy, increased flexibility, energy storage, electro-mobility and demand response**

(38) Pursuant to Article 64(1), fifth subparagraph, of Regulation (EU) 2019/943 and Article 66(2) of Directive (EU) 2019/944, a derogation decision is to ensure that it does not obstruct the transition towards renewable energy, increased flexibility, energy storage, electro-mobility and demand response.

(39) As regards the transition towards renewable energy and increased flexibility, including demand response, and energy storage, it should be noted that well-functioning forward, day-ahead, intraday and balancing markets, in accordance with the requirements set in Regulation (EU) 2019/943 and Directive (EU) 2019/944 should provide the necessary dispatch and investment signals to maximise the potential development of those technologies. This is expected to be the case once the island of Crete is fully interconnected with mainland Greece.

(40) As indicated in recital 56 of Decision (EU) 2022/258, prior to the completion of the Phase I interconnection, technical limitations were applied to Crete, imposing a maximum penetration of renewables to 25 % of the load, due to operational security constraints. The completion of Phase I relieved, to a certain extent, that limitation imposed on renewables. The hybrid model allows Crete to export its electricity in case of low load and high renewables generation, in order to avoid curtailment of renewables. Greece submitted figures in support of that statement, demonstrating that during 2021 and especially 2022, which marked the first full year of the operation of the Phase I interconnection, there was an increase in RES production compared to previous years.

(41) Greece notes that the requested derogation will not slow down the already ongoing development and preparation for the installation of new RES capacities on the island of Crete. Greece also submitted that upon completion of the full interconnection, Crete will accommodate at least 2 150 MW of RES, which, considering the installation of storage units, may increase to 2 500 MW.

(42) As regards increased flexibility, energy storage and demand response, the possibility of offering flexibility services, including storage, to support the electric system depends on the quality of the price signals and their ability to provide efficient investment and dispatch incentives to the providers of those services. As a rule, structural congestion within a bidding zone, which will be the case during the transitional period from Phase I to Phase II, can result in distorted investment signals for location-specific flexibility services. However, in a two-bidding zones approach for Crete and mainland Greece, the investment signals would be highly unstable, given the timeframe for the completion of Phase II and the full interconnection of Crete to mainland Greece, which will relieve structural congestion. Therefore, since the connection to the mainland will enable market-based provision of flexibility services, a short-term derogation which enables rapid integration of Crete into the mainland system is beneficial to the integration of demand response, energy storage and other flexibility sources.

(43) Article 64 of Regulation (EU) 2019/943 does not require that derogation decisions maximise the potential for flexibility or energy storage. A derogation under that Article only aims to ensure that it does not obstruct such transition. In other words, the derogation should not prevent developments which, without the derogation, would occur naturally. It is unlikely that, absent the derogation, well-functioning forward, day-ahead, intraday and balancing markets would develop in each of the electricity systems in the island of Crete. This is due to the challenges linked to the operation of the small connected electricity systems, the very low levels of competition in the generation segment, and the lack of connection to the mainland market. In that respect, the limited duration of the derogation, and the readiness for a full market operation as soon as Phase II is completed, is of utmost importance.

(44) Given its short-term nature, the hybrid model does not appear to have a noticeable impact on the further development of renewable energy, flexibility, energy storage, electromobility and demand response.

(45) Finally, Article 64(1) of Regulation (EU) 2019/943 requires the Commission to set out to what extent the derogation is to take into account the application of the network codes and guidelines. In this case, except for the provisions affected by the scope of the derogation detailed in recitals 32 to 37, the network codes and guidelines are, and are to remain, applicable to the island of Crete.

4.4. Limitation of the derogation in time and conditions aiming to increase competition and integration with the internal market for electricity

(46) Article 64 of Regulation (EU) 2019/943 and Article 66 of Directive (EU) 2019/944 expressly set out that the derogation is to be limited in time and is to be subject to conditions aiming to increase competition and integration with the internal market for electricity.

(47) In light of the reasons put forward by Greece in recital 19, the new derogation request is limited to the transitional period ending on 31 December 2025 at the latest.

(48) It is understood that by 31 December 2025 the interconnector between Crete and the Greek continental system is expected to be operational, together with the appropriate metering infrastructure enabling Crete to become part of the Greek wholesale electricity markets. Greece confirmed that there will not be any further delay to the completion of the interconnection project.

4.5. **Time of effect**

(49) While the Application was received on 18 December 2023, it was not possible to adopt this decision before 31 December 2023, at which point the derogation granted in Decision (EU) 2022/258 expired. In order to avoid rapid and unpredictable changes of the regulatory framework for the period between 1 January 2024 and the date of adoption of this Decision, which could seriously harm market functioning on the island of Crete and possibly in mainland Greece, this Decision should apply from the date following the end date of the derogation granted in Decision (EU) 2022/258, namely from 1 January 2024.

HAS ADOPTED THIS DECISION:

Article 1

A derogation is granted to the Hellenic Republic from the provisions of Article 6, Article 7(1), Article 8(1) and (4) and Articles 9, 10 and 11 of Regulation (EU) 2019/943 and from the provisions of Article 40(4) to (7) of Directive (EU) 2019/944, as regards the island of Crete.

Article 2

The derogation granted under Article 1 shall apply from 1 January 2024 until 31 December 2025 or until the completion of Phase II of the interconnection between Crete and mainland Greece, whichever comes first.

Article 3

The Hellenic Republic shall inform the Commission in two instances, first by 31 December 2024 and second by 30 June 2025, of the progress and remaining planning towards the completion and commercial operation of Phase II of the interconnection between Crete and mainland Greece, including regarding the deployment and operation of the adequate metering infrastructure allowing the participation of Crete in the Greek wholesale and balancing market.

Article 4

This Decision is addressed to the Hellenic Republic.

Done at Brussels, 29 April 2024.

For the Commission
Kadri SIMSON
Member of the Commission