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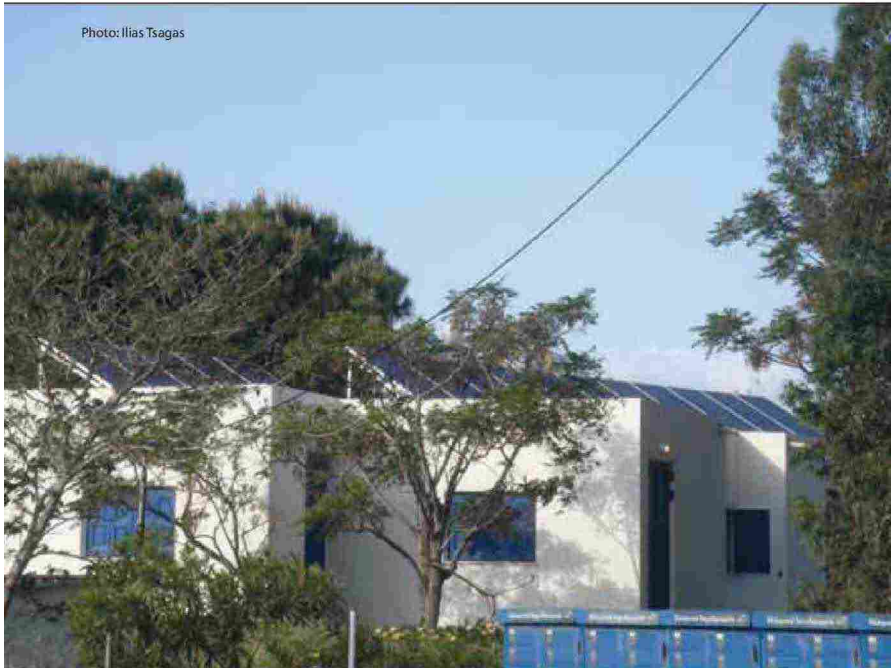


Photo: Ilias Tsagas

Greece's rooftop market has shrunk in 2014 and now amounts to 374 MW of installed capacity.

Shared problems, fragmented interests

Retroactive FIT changes in Europe: Feed-in tariffs have been the cornerstone of promoting renewable energy in Europe. Recently, however, European governments have turned hostile towards them and some have cut tariffs for renewable energy projects retroactively. What are the latest developments, and what is realistically possible to expect regarding tariff subsidies in Europe?

At his presentation in October's Solar Energy U.K. event in Birmingham, Paul Barwell, CEO of the U.K.'s Solar Trade Association, told the audience that the U.K. has inherited a GBP 555 million (\$891 million) renewable energies cost stemming from past solar PV feed-in tariffs (FITs). There is nothing we can do about it, Barwell said, "this is a legacy cost," and we should just move on examining ways of deploying solar PV at the lowest cost possible.

Many renewable energy developers in Europe probably wish their countries had adopted a similar rationale. The European renewable power sector has been widely hit by retroactive FIT cuts affecting installations' profitability, harming investor confidence and eventually

bringing new installations to a halt. In some cases, like in Greece, cuts took the early form of a temporary levy to photovoltaic installations that later became a permanent and retroactive FIT cut. In July, Italy became the most recent European country retroactively reducing the tariffs for existing PV installations. Others, like Spain and the Czech Republic have no FIT for solar PV projects in place at all. Not surprisingly, renewable power stakeholders from these countries have embarked on legal battles against retroactive policies at either the national or European courts, or both.

Common concerns

The arguments against retroactive measures wherever these have been imposed

remain more or less common and revolve primarily around the breaching of valid and lawful contracts between the state and the investors. Because renewable power projects are highly leveraged, renewable power generators in Europe are brought in front of a common problem: The reduction in their cash flows means that many may have to default on their loans. Furthermore, there have been commonly expressed concerns that retroactive legislation could have undesirable long-term consequences. Speaking of Spain for instance, David Robinson of the Oxford Institute for Energy Studies at the University of Oxford in the U.K. has argued that, "changes to regulations for existing renewables have introduced a perception of regulatory risk that could well discourage investment in Spain in this and other sectors."

On the other side, governments argue that retroactive measures against renewable power plants are a necessity driven by the revenue deficit resulting from the price of tariffs subsidizing renewable power generation. The question therefore emerges as to whether a common legal approach to face shared problems and challenges is possible. Professor Antonis Metaxas, Chairman of the Hellenic Energy Regulation Institute and founding partner of Metaxas and Associates, a predominant Greek law firm specializing in Energy and EU competition and state aid law, confirms that there have been discussions among colleagues in Europe concerning ways to form a common approach against retroactive measures based on EU law normative provisions. "Although the regulatory structure of the energy market as well as the exact nature of the distortions that are causally linked with the RES deficit are not identical in all member states, our law firm has been asked, due to its scientific expertise, to contribute to the formulation of such an EU-wide legal argumentation based on common principles of EU Law," Metaxas told **pv magazine**. "However, as already mentioned, even at the EU level, legal arguments often need to take into account electricity market details that vary significantly among the member states," he added.

In fact, the argument that renewable power subsidy tariffs alone created the revenue deficit in the electricity sectors is often misleading because it fails to take into account an array of electricity costs

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including transmission and distribution costs, conventional energy subsidies and other regulated costs. So Metaxas' suggestion that a reference to domestic electricity market structures is needed makes sense.

Another obstacle facing the formation of a common legal approach against retroactive measures in Europe, said Metaxas, is the stakeholders' fragmentation of interests, often visible within a country alone. In Spain for instance, where a common domestic approach against the government's retroactive measures has successfully been formed, this is the result of Spanish stakeholders coming together, aligning their interests and building arguments, said Metaxas. Consequently, Spanish stakeholders are represented by a single legal firm taking actions both domestically and internationally. This is not the case in Greece, he pointed out. Greek stakeholders, such as renewable power associations, developers and others, have failed to form a common position against the retroactive measures and also lack a common approach regarding the sector's role in the electricity market design.

Greece

Greece's measures curtailing the income from solar PV projects started in November 2012 when the Ministry of Environment, Energy and Climate Change passed a law, according to which all solar energy producers needed to pay a special levy totaling 25% to 30% of their annual turnover. The measure excluded only residential systems. The country's Association of Photovoltaic Energy Producers (SPEF) then filed two separate complaints at the EU Energy and Competition Directorates respectively, but to no avail.

Domestically, the ambitions of Greece's solar power investors to reverse the Greek government's decision to impose a special levy on their income were also not successful. A trial against the levy at Greece's Supreme Administrative Court in June failed to realize investor expectations. The levy, the Court found, is compatible with the country's Constitution. The rationale behind the Supreme Administrative Court's decision, Metaxas told **pv magazine**, stems inter alia from the levy's temporary nature. Judges found that since the levy was only temporary, it didn't violate the Constitution's rules. "This cannot be claimed in the context of

the 'New Deal' legislative measures," said Metaxas, against which his law firm has been hired to represent its clients, some of Greece's biggest renewable energy sector investors, at a series of judicial procedures pending before the country's Supreme Administrative Court and other national courts later in 2015.

The "New Deal" is the so-called set of retroactive measures legislated in March that applies to all renewable energy systems (RES). The measures include permanent retroactive FIT cuts of all operating PV power plants by an average of 30%, with the reductions being also applicable to rooftop installations. Other technologies, such as wind and hydro, faced much smoother FIT reductions.

Amazingly, despite all Greek RES stakeholders rejecting the "New Deal" measures, **pv magazine** has gathered what seems to be a unanimous stance that previous FITs were producing internal rates of return (IRR) for Greek photovoltaic projects well beyond the European average. SPEF's Chairman Stelios Loumakis told **pv magazine** that solar PV tariffs prior to the "New Deal" were enabling IRRs beyond 20% to 25%. Stelios Psomas, policy advisor at the Hellenic Association of Photovoltaic Companies (Helapco) also revealed that solar PV projects' IRRs before the FIT cuts were beyond 20%, while today have been reduced down to 12 to 15%, "which remain higher than in other [European] countries, but we should also take into account the high country risk."

SPEF, Helapco, the Greek government and even Metaxas appear to agree – and this is not a common situation for anyone following Greek policy debates – that the old FITs needed to be rationalized followed by a simultaneous lift of existing distortions that contributed severely to the formation of the RES deficit, but a greater consensus appears shaky. Opinions seem to be divided on the crucial question of what needs to happen in Greece's RES sector.

For their part, SPEF, Helapco and Metaxas agree that the energy market needs to be redesigned reflecting the real cost of the wholesale electricity market price. "Currently, the wholesale electricity price reflects only a portion of its actual cost. Fossil fuel power plants receive subsidies of over €30/MWh, which do not reflect on the wholesale electricity prices" said Psomas. Should

distortions of the Greek electricity market design be removed, wholesale electricity prices from solar PV power plants would compete with those from fossil fuels, Psomas argued.

The Greek PV market soared last year installing a little over 1 GW. In 2014 so far Greece has installed a mere 10 MW, a dramatic decrease compared to 2013. Investor income has been reduced significantly



Photo: Frédéric Andrieu/Solarindex

Protest against subsidy reductions in Spain.

and many struggle to meet their obligations, most importantly a series of state taxes, said Psomas, adding that thankfully bankruptcies have been avoided. "The worst effect is the erosion of investor confidence and this is something set to continue. Furthermore, given that the cost of PV has fallen dramatically – current FITs for power plants larger than 1 MW are about €90/MWh – it is unfair to see a reluctance in deploying new projects in a country defined by such great sunshine," Psomas noted.

Greece's energy regulator RAE recently asked investors who had applied for PV projects to confirm whether they plan to materialize their projects or not. Of the 4 GW of applications for large-scale PV projects (larger than 1 MW), investors confirmed an interest to develop about 1 GW of solar PV. These projects together with an additional 1 GW pipeline stemming from future applications for large-scale projects and net metering applications for small systems are expected to be built by 2020, said Psomas. However, to kick off the market again Helapco is asking the government to keep FITs in 2015 at the same level as in 2014. Post-2016 Greece is expected to apply a new renewable power subsidy scheme based on a combination of auctions and premiums, as suggested by the EU guidelines.

The debate wrongly focuses on what magnitude or even type of subsidies solar PV will enjoy in the short and lon-

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ger future, SPEF's Loumakis pointed out. The number one priority for Greece, he said, is to reform its wholesale electricity market structure towards a model that promotes fair competition among the various power sources, leaving the market to dictate future investments. To date, the wholesale electricity market is dependent upon fossil fuel dominance, only facing renewable energy as a peripheral energy source. Should a fair wholesale market design, policies for smart meters and energy storage, and an expansion of the electricity grid materialize, renewable power development could also possibly grow based on healthy market signals and Greece's pragmatic electricity needs, Loumakis argued.

Photo: Juwi Holding AG



A solar PV project installed by Juwi Holding AG in Trebovice, Czech Republic.

Spain

Spain has abolished FITs entirely since 2013 via the Real Decreto Ley 9/2013. A new law, the RD413/2014, approved in June, implemented the FIT cuts and provided guidelines concerning the calculation of the solar PV project income. This is now calculated separately per project and is based on a series of parameters that take into account a plant's "efficient operation." These parameters have been established via a separate ministerial mandate in July.

The Spanish Ministry of Industry, Energy and Tourism (Minetur) said the new policy will guarantee a 7.4% IRR to solar power installations, but payments will only be provided to those projects that are not expected to receive a reasonable market rate.

Spain's new renewable energy remuneration policy will lead to payments that are significantly reduced compared to the past. Specifically, subsidy payments for old power plants almost disappear. For newer power plants the new system

pays the "recognized costs", an amount to recover fixed costs and variable costs associated to capital costs.

The new policy also takes into account the so-called "regulatory life cycle of a renewable power plant." The regulatory periods are six years, divided into two sub-regulatory periods of three years. Within each sub-period revisions will be made, but one should bear in mind that the new system, as the Spanish government said, will only allow "normal return of investment," so presumably payments should be decreasing in time.

Finally, Spain's latest law obliges renewable power plants to compete with all other forms of energy in the wholesale market in equal terms. Thus, all power units must go through the electricity market (often referred to as the "pool"). Renewable units do not get used as secondary or tertiary reserves anymore. They sell as much electricity as they can. "Clearly, units that benefit are those with low variable cost, while the price in the pool should remain low because of the overcapacity of the system," Aitor Ciarreta, professor of economics at the University of the Basque Country in Bilbao, told **pv magazine**.

Spain's photovoltaic association Unión Española Fotovoltaica (UNEF) says the abolition of FITs has stalled the PV market, while the latest law has brought an uncertainty that harms future investments by scaring investors who are either going to abandon Spain altogether or invest with a risk premium that will hurt the competitiveness of the technology. The numbers are revealing. According to UNEF statistics, solar PV added 122 MW in 2013 and only 5 MW from January to May 2014. These installations stem from applications based on 2008's RD 1578 law.

Pedro Palencia, UNEF's energy policy director, told **pv magazine** that Spain's Supreme Court, the Tribunal Supremo, announced in mid-October it will proceed with UNEF's lawsuit against this summer's electricity reform measures. Overall, there were over 300 lawsuits to the Supreme Court revealed Palencia, but the court has decided to only allow a handful going forward, setting the case for the rest, too. "UNEF's lawsuit is very important and it will decide for the whole sector," Palencia said.

Despite this harsh period for Spain's solar investors, there is still a notable appetite to develop new plans, Palencia

added. "And although Red Eléctrica de España (REE), the country's electricity grid operator, hasn't confirmed anything yet, there are rumors that around 10 to 15 entities have asked REE to indicate to them geographic areas of where to develop new plants. It is not certain whether these will materialize or investors will want to proceed, but at least this is an indicator that investors are still eyeing opportunities," Palencia noted. The biggest problem for future installations, Palencia argued, isn't a lack of investment appetite but the electrical system's overcapacity. Spain has installed more power than it currently needs and the economic crisis doesn't help either, keeping electricity demand low.

Czech Republic

In September 2013 the upper house of the Czech Parliament passed a bill that ended feed-in tariffs for all renewable energies starting January 2014 and extended a tax imposed on solar PV power plants. Specifically, the 28% tax, applied retroactively on solar PV plants larger than 30 kW electrified as of 2010 until the end of 2013, was converted on to an open-ended 10% tax on these installations.

The Czech Photovoltaic Industry Association (CZEPHO) had then announced that the group was looking for legal means to repeal the law. Updating on this front in October, CZEPHO press officer Milos Cihelka told **pv magazine**, "Legal action against the so-called 'solar tax' has to be done by operators of PV." The strategic role of CZEPHO is to coordinate and support all legal actions, he explained. "We're still waiting for the first results. However, legal action against the abolition of the FIT do not have much hope of success in the Czech republic, so the operators are turning to the European courts," he continued. "Our main effort is to strike back and prevent new retroactive action against solar power. For example, we have been successful with a new proposal of legislation, which proposed a cap for the production, which is subject to FITs. This proposal of the new Act has now been ultimately removed."

The financial situation of many operators of PV in the Czech Republic is bad, affecting the local banks too, Cihelka added. It is for this reason that the association of banks, "together with us, is strongly pushing for policies that are not retroactive," he said.

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According to the Czech Republic's Energy Regulatory Office, only 53 new PV power plants totalling 800 kW have been connected in the first half of 2014, almost all with a capacity up to 30 kW each. In 2013 and 2012, photovoltaic installations in the country amounted to 54 MW and 107 MW, respectively. The impressive decrease in new installations is linked to the abolition of the FITs, the ever-changing legislation governing the connection and operation of the power plants that injects further uncertainty into the market, and of course the retroactive interference in the solar sector, Cihoka explained. A window for PV growth can be seen in the net metering category of PV power plants, but this is still not allowed in the country.

Italy

Italy has ceased providing FITs for new photovoltaic power plants since July 2013, after the budget cap for incentives was reached in June 2013. However, a spokesperson for the association ANIE Rinnovabili, the association representing Italian companies working in the RES sector, told *pv magazine* that "installing solar PV in Italy without subsidies is legally feasible, economically viable and already happening, having added over 300 MW of PV installations in the country by the end of September 2014." Of these, only 11 MW are power plants larger than 1 MW. The rest is comprised of smaller power plants mainly installed via the country's net metering scheme, the ANIE spokesperson said. In August, Italy raised the upper limit for net metering in the country from 200 kW to 500 kW per installation, providing hope that the measure will boost the commercial rooftop PV sector.

However, new laws passed in August also reduced the country's FITs for existing installations by 8% for PV plants larger than 200 kW, alternatively offering a tariff reduction of between 17% and 25% against a four-year payment extension. In addition, the new regulations allow all operators of renewable energy plants the possibility of an early redemption of up to 80% of their incentives by selling them to a financial institution.

Italy's retroactive FIT reduction law has been better managed than in Greece and Spain, providing assistance to operators suffering a diminished cash flow as a result of the FIT cuts. Assistance includes

the possibility of bank financing for up to the difference between the old FIT and the reduced rate resulting from the changes. The state-owned Cassa Depositi e Prestiti will either fund or guarantee the financing on the basis of agreements made with the banking sector, and its exposure will be counter-guaranteed by the state. Similar financial assistance was also a demand of the Greek and Spanish PV sectors, yet the Greek and Spanish governments have made no plans for assisting financially struggling investors.

Despite the fact that retroactive laws have been better designed in Italy than in other EU member states, all of the legislation's options will result in a reduction of PV plant owners' investments, says the international law firm McDermott Will & Emery. Furthermore, McDermott Will & Emery says, "It is questionable if the decree is compatible with the principles of the Italian Constitution, EU law and Italy's obligations under international treaties."

Emilio Cremona, president of ANIE Rinnovabili, told *pv magazine* that together with the directorate of ANIE Federation, the association is considering the opportunity to undertake legal actions against the retroactive FIT cuts. To date, there has not been an announcement from ANIE yet regarding this front.

So, what can we expect?

It is beyond the scope of this article to assess the chances Europe's renewable power stakeholders have in succeeding in a legal victory against retroactive feed-in tariff cuts and taxes. It is rather certain, though, that a legal victory in one EU member state will trigger at least some sort of rearrangement in other member states. Communication among Europe's solar PV players and their lawyers is open and continues to take shape. And although limits referring to national electricity market characteristics exist, EU laws, institutions and guidelines also exist that diffuse the European policy making process. The battle against retroactive measures is expected to be fought domestically, with effects being Europe-wide.

What appears to be an even greater certainty is wherever FIT schemes continue to exist, their days are numbered. On April 9, 2014, the European Commission adopted its new Energy and Environmental State Aid Guidelines

(EEAG) asking for renewable energy aid to switch towards market-based mechanisms. This means the gradual phase-out of FIT schemes and their replacement with market-friendly types of aids such as feed-in premiums and auctions. Large-scale renewable power plants post-2016 will need to obey the new guidelines, while aid schemes for smaller installations would be more flexible with the trend expected to be provisions for net metering. The term "market-friendly" that the European Commission uses when speaking of its new guidelines is highly contested given that 65 energy-intensive sectors competing outside the EU could benefit from reductions in the charges levied for the funding of renew-



Photo: Conergy Deutschland GmbH

Conergy's 5 MW rooftop solar power plant for the Italian trade show company Fiere di Parma.

able energy support, which make up an increasing proportion of the industry's energy bill. Nevertheless, this is the new policy reality, which will also allow for aid for cross-border energy infrastructure and for so-called "capacity mechanisms" aiming to trigger investment in assets that would not be delivered in the absence of state intervention.

Solar PV's greatest ally these days is its technology and the module oversupply. Costs are set to continue falling. Given that renewable power's other traditional ally, feed-in tariffs, is disappearing, solar PV stakeholders in Europe need to concentrate efforts on pressuring for renewable energy friendly wholesale electricity markets. Such markets will allow renewables and emerging technologies such as energy storage taking the lead, and competing against fossil fuel plants, not complementing them. Renewable power stakeholders have to stay innovative, should they wish to see high growth of the industry returning across the continent. ♦

Ilias Tsagas