DCFTA, Electricity and Renewable Energy: What future for the Tunisian Electricity and Gas Company and for Tunisia's energy transition?

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1. Introduction

Since the official beginning of negotiations for the Deep and Comprehensive Free Trade Agreement (DCFTA) between Tunisia and the European Union (EU) in October 2015, the asymmetry that exists between Tunisia's and the EU's negotiating levers has become increasingly striking and questions the very worth of the negotiations from Tunisia's point of view. Known as the DCFTA, this agreement is part of the New European Neighborhood Policy (NENP) and is an addition to the Association Agreement (AA) between Tunisia and the EU, in order to extend trade liberalization to align with European standards and legislation. In other words, the "Comprehensive" and "Deep" dimensions of this agreement will require Tunisia to undertake profound and irreversible changes in its national public policies.

The DCFTA proposed by the EU is being negotiated around two sectors, namely agriculture and services. This paper draws attention to the energy sector by analyzing the DCFTA proposal with a focus on the chapter on "Energy and Raw Materials," and more particularly on the implications in terms of electricity production, renewable energies and Tunisia's energy strategy.

2. Deep and Comprehensive Free Trade Agreement between Tunisia and the European Union

There have been several shifts in European policy towards the southern Mediterranean region from the 1970s until the current implementation of the new European Neighborhood Policy (NENP). Though the aims have remained consistent- the development of a free trade area and the trade liberalization with the southern Mediterranean- the EU's strategies have changed over time from a global and regional approach, in the form of cooperation agreements[1] and Association Agreements (AAs),[2] to a country-specific approach, in the form of Neighborhood Action Plans[3] and Free Trade Agreements (FTAs).

Regarding Tunisia, in 2012 the EU granted the country special partner status, by reviewing its ENP. The latter required Tunisia to undertake institutional and political legislative reforms to integrate European standards, beyond trade rules. With the DCFTA negotiations, it is claimed that through alignment with EU norms through legislative and legal approximation, Tunisia would be able to benefit from the EU's marketplace, though without the prospect of membership. This new generation of FTAs is therefore characterized by its "Comprehensive" dimension, encompassing all domains and sectors of activity, and "Deep" dimension, entailing the transformation of Tunisian standards and legislation to approximate those of the EU. The approximation of standards is a prerequisite for potential access to the EU's internal market for the export of goods and services. However, approximation on its own does not guarantee this access because it is also linked to the negotiations of all DCFTA content, hence the agreement's key role in the NENP.[4]

The EU has pressed Tunisia to sign this agreement in a short time span. This urgency can be explained by the fact that since 2003, the EU's share of Tunisia's trade exchange has steadily decreased from 78% in 2003 to 63% in 2015, representing a 15% decrease in trade exchange. Moreover, this haste from the EU to deepen its trade relations with Tunisia, through the DCFTA negotiations, is perceived as part of the EU's broader strategy to keep Tunisia in its "lap."[5]

In 2015, the EU-Tunisia DCFTA was officially presented by the EU as a key instrument in the NENP,[6] [7] and is currently composed by 14 negotiating areas covering two sectors, namely Agriculture and Services. Concerning the latter sector, the chapter on Energy proposed in May 2018 requires, among other provisions, the prohibition of import or export monopolies, price deregulation and the use by third parties of the energy network.

1 Cooperation Agreement with Tunisia entered into force between 1978 and 1979

2 Association Agreement in 1995 with Tunisia ratified in 1995 and entered into force 1998

3 Tunisia adopts EU-Tunisia Neighborhood Action Plan in 2006

4 Chandoul J. (2017) DCFTA: a key instrument of EU policy. Briefing paper n°2. Tunisian Observatory of Economy.

5 Ben Rouine C., (2017) Historique des relations commerciales Tunisie – UE : L'heure du désenchantement ? Briefing paper n°1. Tunisian Observatory of Economy.

6 Chandoul J. (2017) DCFTA: a key instrument of EU policy. Briefing paper n°2. Tunisian Observatory of Economy.

7 European Commission (2015) Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Review of the European Neighborhood Policy.

3. Monopoly prohibition and the electricity sector in DCFTA: what future for Tunisia's Electricity and Gas Company?

As part of its liberal approach, the EU proposes that Tunisia adopt the irreversible policy of monopoly prohibition, which would have the effect of reducing the Tunisian state's flexibility and regulatory rights. This approach requires the elimination of any state measure that is geared towards promoting social, environmental or development priorities. The Tunisian authorities would no longer be able to design and implement policies that promote Tunisia's development, for example through the preferential allocation of resources to national investors, as under the new policies these would be considered discriminatory towards foreign investors.

Considered inconsistent with free trade competition, monopoly prohibition is stipulated in Articles 8 and 9 of the "Rules on competition and state aid"[8] of the DCFTA proposal, where it is stated that all state monopolies with a commercial nature will no longer exist by the end of the fifth year following the conclusion of the agreement. Public companies with special or exclusive rights will be subject to market conditions at the end of the fifth year following the conclusion of the agreement, in order to "free" the trade between the EU and Tunisia.

By signing the DCFTA, Tunisia will adapt, establish or maintain national competition legislation to which all companies in all economic sectors will be subject to an independent competition authority for the full application of this legislation within three years of the agreement's conclusion date, with financial penalties imposed in cases of infringement of the competition law.[9]

Through its "deep" dimension, this agreement defines the practices Tunisia must follow after signing the agreement. This includes the irreversible replacement of Tunisia's own rules with the EU's functioning rules.[10],

8 Deep and Comprehensive Free Trade Agreement (DCFTA) between Tunisia and the EU (2018) Competition and State Aid proposal. **http://trade.ec.europa.eu/doclib/press/index.cfm?id=1489**

9 Article 6. Deep and Comprehensive Free Trade Agreement (DCFTA) between Tunisia and the EU (2018) Competition and State Aid proposal.

10 Article 1. 3 et 4. Deep and Comprehensive Free Trade Agreement (DCFTA) between Tunisia and the EU (2018) Competition and State Aid proposal.

In parallel, another proposal included in the DCFTA addresses the monopoly, on "Trade in services and investment." In this proposal, it is stated that the signatories to the agreement may not maintain or adopt any restrictive measures to market access, in the form of monopoly, exclusive rights or as a requirement of economic needs.[11] Thus, no market regulation is possible if it harms the investors' profits.[12]In addition, the draft proposal on trade in "energy and raw materials"[13] also stipulates a ban on import and export monopolies. In Article 4 of this section, entitled "Export and Import Monopoly", it is stipulated that neither Party may designate or maintain an import or export monopoly; that means, no granting of an exclusive right or authorization by a Party to an entity for the import of energy or raw materials from the other Party or for the export of a good to the territory of the other Party.

If this provision is adopted, the Tunisian government would no longer be able to exercise any market regulation, and public companies would no longer have the ability maintain a commercial monopoly, becoming subject to market conditions, will also no longer be able to exercise any market regulation and, in the case of the energy market, will no longer have an import or export monopoly. This is what is meant by the "Comprehensive" dimension of the DCFTA.

If we combine all the DCFTA options in the various proposals, this agreement will have direct and irreversible repercussions on Tunisian public companies. Even if it allows public companies to continue to exist, it would undermine the government's ability to regulate or even finance public services, since doing so would affect competition, bias market laws and would not encourage investors in accordance with the EU's liberal approach. The signing of the DCFTA and the liberalization of monopolies in strategic sectors such as energy could have serious con-

11 Article 4 et 7. Section 1 Chapter II. Deep and Comprehensive Free Trade Agreement (DCFTA) between Tunisia and the EU (2018) Trade in services and investment.

12 Noted that in the EU proposal on Trade in services and investment, the liberalization will be applied to all service activities, excepting the regulations listed in Annex I and the sectors listed in Annex II. But, Annexes I and II are not yet completed and that, as long as nothing is mentioned in, DCFTA would liberalize all service activities without exception.

13 Deep and Comprehensive Free Trade Agreement (DCFTA) between Tunisia and the EU (2018). Energy and raw material proposal **http://trade.ec.europa.eu/doclib/press/index.cfm?id=1489**

sequences and risks.

In particular, these changes would represent a risk to the production and supply of electricity that is necessary for economic development. Indeed, electricity is involved in the production of almost all goods and services, and is mainly consumed directly by households.

The various options proposed in the DCFTA would therefore particularly affect the Tunisian Electricity and Gas Company (known as STEG) in the case of electricity production. As a public company created in 1962,[14]STEG's mission is to produce and distribute electricity and natural gas in Tunisia. With the creation of a public monopoly entrusted to STEG, the country's electrification increased from 21% in urban areas and 6% in rural areas to almost 100% in both areas.[15]

STEG's monopoly is unique. Considered as a natural monopoly,[16] because of the physical dependence of its activity on the use of a common network, STEG's status leaves little opportunity for competition. Indeed, it has been demonstrated that due to the economic specificity of electricity,[17] a single company is more effective in serving customers continuously, reliably and consistently at a minimum cost. Therefore, its management is more efficient when it is a public rather than a private entity. STEG meets then the conditions to constitute a monopolistic structure. But the electricity sector is actually composed of four segments, namely electricity "production", i.e. the transformation of an energy form into an electrical energy, interregional and international "transport" of electricity and local "distribution", and "supply", i.e. the sale of electricity to customers. Following the major waves of liberalization, the sector's upstream and downstream functions, i.e. production and supply, have been subject to competition. Only the transportation and distribution of electricity are currently considered by the EU as a natural monopoly. Indeed, it is recognized that competition on transportation and distribution would replicate the existing network and competition between network coordinators would increase costs. But the kilowatt-hours sale on the wholesale market and its retail sale to individuals are to be liberalized and subject to competition laws.[18]

In the EU, the opening of network structured industries to competition has been under way since the late 1990s.[19] The EU's implementation of these reforms and its different implementation mechanisms are seen as the model for the DCFTA regulations proposed for Tunisia . But despite the fact that the liberalization of electricity production and supply has and continues to be promoted as a successful model in Europe, the most recent studies show that the impact of this liberalization is far from the promises made at the inception of liberalization. Indeed, the establishment of an efficient and unified electricity market in the EU is still an unfulfilled objective despite numerous reforms.[20]In addition, it has been demonstrated that the final customer does not benefit from any significant gain in lower electricity prices despite the possibility of freely choosing his/her supplier on the retail market.[21] If there are any benefits to this model on the European electricity market they are difficult to identify because they are likely to be small and disguised by other changes to the market made at the same time. During the period when the liberalization reforms were being implemented, subsidized renewable energy production also increased significantly, driven by the European decarburization program.[22] Thus, while wholesale electricity prices in Europe have fallen by almost two-thirds since their historic high reached around 2008, the reasons for this decline are not liberalization or unification and harmonization of the sector at the European level but rather the expansion of renewable energies. It is electricity

14 Decree-Law No. 62-8 of 3 April 1962

15 **http://www.steg.com.tn/fr/institutionnel/historique.html**

16 The natural monopoly is an economic phenomenon. A natural monopoly exists when one company alone can supply a good at a lower total cost than if the same good were produced by several companies. It differs from the legal monopoly, in which the right to exclude competitors from the market is derived from the law. When there is a natural monopoly, productivity can be compromised in a competitive situation.

17 Incapacity of storage, punctual demand, large cyclical, seasonal and random variations in the short and long term

18 Lévêque F., (2017) La nouvelle fée électricité. The Conversation. **https://theconversation.com/la-nouvelle-fee-electricite-87302**

19 The first Directive concerning the internal electricity market (96/92/EC) goes back to 1996, then 2003 (03/54/EC) and 2009 (09/72/EC).

20 Morales L., Hanly J., (2018). European power markets–A journey towards efficiency. Energy Policy, Volume 116, Pages 78-85,

21 Saguan, M. & Sautel, O. (2011). L›ouverture à la concurrence du secteur électrique : rôle et gains du client. Flux, 84(2), 8-20.

22 Pollitt, M. (2018). The European Single Market in Electricity: An Economic Assessment. Cambridge Working Papers in Economics 1832, Faculty of Economics, University of Cambridge.

produced from renewable energies that therefore guarantees a lower wholesale price for the EU. This is why it is advantageous for the EU to now focus on liberalizing the energy market in the southern MENA countries so that they can exploit the natural advantages of this part of the Mediterranean to achieve energy efficiency at a lower cost.

This analysis reveals the important role played by the DCFTA for the EU in relation to the energy field, and more particularly in the production of electricity from renewable energies. Indeed, by removing STEG's monopoly in electricity production, the EU would succeed in gaining access for specialized European investors in this domain. It should be noted that these investors will be heavily subsidized by the EU in order to facilitate a successful energy transition and achieve its energy efficiency policy objectives. Furthermore, by including strict rules (the acquis communautaire) prohibiting monopoly and limiting the role of public policies in regulating the electricity market, the DCFTA guarantees the free transit of electricity to Europe. In this way, the EU ensures the diversification of its energy sources, suppliers and supply networks to deal with possible energy supply disruptions while guaranteeing its end customer a low-cost invoice.

In order to achieve the above, the EU proposal on energy trade includes, in addition to the prohibition of the import and export monopoly (Article 4), the unencumbered use of the energy network by a third party (Articles 12 and 14) and price deregulation (Article 5). Thus, STEG, without any export or import monopoly, would no longer have a monopoly on production or supply. In addition, the electricity wholesale selling price would be subjected to the market price (Article 5). Indeed, despite the possibility in this proposal to introduce a domestic price by imposing a public service obligation (Article 6), the latter must be non-discriminatory and limited in time and must not concern wholesale electricity markets. In addition, for the use of energy transport infrastructure (Article 12), the owners or operators of any transport networks present on their territory (in the case of Tunisia, STEG) would be required to grant access to energy infrastructure for the transport of gas and electricity to any entity of each Party. Therefore, though all would benefit from the transmission of electricity through the national electricity network, only STEG would assume the network maintenance cost. In other words, the private sector would benefit from free access to Tunisia's publicly constructed and maintained transport infrastructure at prices set by an independent body (Article 13). This price would be relative to costs only, and therefore would not allow for any profit margin for STEG. That said, Parties have the possibility to introduce or maintain a list of derogations concerning third party access to the transport network. This list of derogations must be made on the basis of objective criteria laid down in its legislation, provided that such derogations are necessary to achieve a legitimate political objective. But what is a legitimate political objective? And who decides? Furthermore, what is the effect of the monopoly prohibition options presented in the other text proposals on these derogations? Let's recall that the "Comprehensive" dimension of DCFTA implies that all negotiated activity areas must be taken into account.

At this stage of the negotiations, and considering the lack of clear explanations and transparency on the objectives of these negotiations, it is difficult to determine what is a legitimate policy or the usefulness of a time-limited and non-discriminatory public service.

In particular, for the electricity sector, the absence of independent analyses on the liberalization of this fundamental sector, which affects all other sectors, makes it impossible to project the future impact of DCFTA on the Tunisian economy.

In concrete terms, is STEG in its current state prepared to face and compete with European electricity producers? The liberalization of electricity production and supply will inevitably lead in this context to the transformation of STEG into a simple electricity distributor for private companies. The electricity sector will then depend solely on the law of the market and will therefore be more sensitive to these effects, which will weaken all the development levers that depend on it.

It should also be remembered that the opening of the electricity sector is irreversible, even if the resulting economic or social impact may be disastrous.

In the current context of energy transition, what are the potential effects of the DCFTA's liberalization proposals on Tunisia's energy strategy in relation to electricity production from renewable energies?

4. Renewable energy potential in Tunisia: What impact on the renewable energy electricity sector?

a. EU energy policy

The EU is the third largest energy consumer in the world, after China and the United States. However, more than half of European gross domestic energy consumption is represented by imports.[23] Therefore, improving energy efficiency is one of the main objectives of the EU's energy policy. Indeed, reducing consumption and improving energy efficiency partly protects European economies from the negative effects of volatility or higher energy prices. For example, the EU has set a binding target of at least 20% of energy from renewable sources by 2020[24] and 27% by 2030.[25] But these steps do not eliminate an essential feature of the European energy system: its dependence on imports.

As part of its energy security strategy, the EU is preparing a package of measures to manage the energy transition and to deal with possible disruptions in energy supply, mainly through the diversification of energy sources, suppliers and supply networks. To this end, the EU encourages Member States to pursue all appropriate forms of cooperation with third countries, both bilaterally or multilaterally, in an effort to achieve their overall national targets as set out in the European Parliament Directive[26] [27] on the proportion of energy use required from renewable resources.

In addition, the EU centers energy in its cooperation with its "neighbors", focusing on regulatory and market reforms, promoting energy efficiency and the use of renewable energies, and improving the security of energy supply. The EU also continues to ensure that energy is properly taken into account in ongoing and future trade negotiations with third countries. This is essential for the EU to ensure sustainable access to energy in world markets, to enable European companies to take full advantage of export market opportunities and to support energy transition in third countries through EU expertise and technology.[28]

As part of this agenda, the EU has signed an Energy Community treaty to extend the rules of its internal energy market to ten countries on its south-eastern borders. As such, energy issues, and in particular energy transport networks, have now been incorporated into a structured neighborhood policy with countries between its borders and Russia.

This is the meaning of the Energy Charter, but also of the Energy Community or the Neighborhood Policy. The Charter's expansive remit includes price liberalization, the prohibition on interrupting or forbidding the flow of raw materials or transit even during a conflict, as well as a very rigorous conflict resolution procedure. However, these proposed agreements are drafted taking into account only the interests of consumer countries and not those of producer countries, as explained by the Russian authorities who have refused to sign the Energy Charter. In particular, Russia, the main supplier of primary energy to the EU,[29] rejects the clauses on the liberalization of Russian energy prices or the liberalization of the energy market, as well as the decoupling between production and transport functions, which would lead to the abolition of the monopoly maintained by Gazprom,[30] the Russian equivalent of STEG.

This explains why one of the sectors negotiated in the DCFTA between Tunisia and the EU is access to energy and raw materials. If Tunisia is considered mainly as a transit country for Europe, this agreement will confirm Europe's monopoly over this transit.

In addition, the proposal pays special attention to renewable energy. Indeed, the EU explains

23 The European Union Explained (2012) Energy. Sustainable, secure and affordable energy for Europeans. European Commission. Directorate-General for Communication

24 European Commission. Energy Strategy and Energy Union. 2020 Energy Strategy.

25 European Commission. Energy Strategy and Energy Union. 2030 Energy Strategy.

26 Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC

27 Proposal for a directive of the European parliament and of the council on the promotion of the use of energy from renewable sources (recast).

28 Communication from the commission to the European parliament, the council, the European economic and social committee, the committee of the regions and the European investment bank second report on the state of the energy union. com/2017/053 final.

29 **https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Principale_origine_des_importations_d%27%C3%A9nergie_primaire,_UE-28,_2006-2016_(en_%25_des_importations_extra_UE-28)_FP18.png**

30 Lupaescu M., (2008) Que devient la Charte européenne de l'énergie ? Nouvelle Europe. **http://www.nouvelle-europe.eu/node/508**

that because Tunisia has a great potential for production, it is necessary to expand energy bilateral trade exchange with the EU. The EU explains the benefits to Tunisia of this proposal by reference to EU investors as the major players in energy technologies. By signing this agreement and removing technical barriers to trade and investment in the renewable energy sector, it is claimed that European investors will be attracted due to the advantage of geographical proximity.[31]

But beyond the official explanations, it is also obvious that this approach is part of the EU's overall policy to reduce its dependence on Russian gas following the 2013 crisis.[32]

Through the DCFTA, the EU aims to diversify its energy sources, suppliers and supply networks in order to ensure access to electricity that improves its energy efficiency and thus is produced from renewable energy in the MENA region. By targeting countries that depend on it for their economic exchanges,[33]the EU ensures the sustainability of this access,[34] making it less dependent on geopolitical conditions and Russia. In addition, by implementing regulations that it has perfected through the European acquis communautaire, the EU ensures the protection and expansion of European companies in the field of renewable resources.

But what does this agreement offer to Tunisian energy policy and the national renewable energy sector?

b. The DCFTA: What's in it for Tunisia's energy transition?

Tunisia is facing a significant energy deficit. Energy expenditure continues to grow, and the central bank's deficit reached more than 6179.4 billion dinars in 2018, compared to 4032.9 billion a year earlier, representing 32.4% of the total trade balance deficit.[35]

Despite the efforts made in terms of energy management and the implementation of policies to promote renewable energy, Tunisia's energy mix remains highly dependent on fossil fuels. In 2009, the National Agency for Energy Management[36] initiated the Tunisian Solar Plan (TSP) to ensure a boost of energy efficiency and advances in the renewable energy domain. In this context, STEG has acted to accelerate the energy transition, since it holds the monopoly of electricity production. However, the choice was made to establish a special subsidiary through a public-private partnership (STEG-ER) dedicated to renewable energies.[37] The objective of this subsidiary is to implement the national policy for the promotion of renewable energies and to boost the TSP[38].

This choice is driven by the fact that the TSP was initially linked to the Mediterranean Solar Plan (MSP). At that time, realizing that there was a great potential for energy production on its borders, the EU decided to launch a series of energy interconnection projects with the Maghreb, notably through the Union for the Mediterranean (UPM). The MSP, as UPM's flagship project launched in 2008, planned to produce additional capacity from wind and solar resources in the MENA countries, and to export some of this energy to the European Union through in-

31 Deep and Comprehensive Free Trade Agreement (DCFTA) between Tunisia and the EU (2018). Energy and raw material proposal. Factsheet.

32 Messadi O (2015) Desertec ou le plan B de l'Europe face à la menace russe. Note analytique. Tunisian Observatory of Economy.

33 Chandoul J. (2017) DCFTA: a key instrument of EU policy. Briefing paper n°2. Tunisian Observatory of Economy.

34 Deep and Comprehensive Free Trade Agreement (DCFTA) between Tunisia and the EU (2018). Energy and raw material proposal. Article 11 interference and unauthorized taking. And Annex II The consultation mechanism in the field of energy.

35 National Institute of Statistics. Foreign trade at current prices. December 2018 press release.

36 Indeed, since the 1980s, Tunisia has impleemented an energy efficiency policy through institutional, regulatory, financial and fiscal tools. The National Agency for Energy Management is the institutional tool for implementing the State's policy for the promotion of renewable energies and the rationalization of energy use. This promotion is also accompanied by a National Energy Management Fund (NEMF) to grant direct financial benefits. Tax advantages complement the direct aid granted by the NEMF and are granted for the benefit of capital goods and products used in the production of renewable energies. In addition, the Investment Code grants a number of advantages and investment aid, depending on the sectors and geographical areas of investment.

37 **www.steg-er.com.tn**

38 **http://www.anme.nat.tn/index.php?id=101**

terconnection lines.[39] A boon for foreign direct investment for the southern Mediterranean countries. But, the MSP was abandoned by the EU. Its termination is in large part justified by the non-conformity of the legislative framework to the EU's, energy subsidies and the lack of investor confidence.[40]

These factors, among others, explain why the legislative framework proposed following the revision of the TSP in 2015 was directed towards liberalizing the renewable energy electricity production sector and excluding STEG from this sector. Indeed, Tunisia's political choices tend to abandon public companies, under the pretext that they are less efficient than their private counterparts, and as a way to appease foreign investors. Recent legislation, including law n° 12-2015 of 11 May 2015, relating to the production of electricity from renewable energies,[41] and the regulatory decree of 24 August 2016, setting the conditions and procedures for the implementation of projects for the production and sale of electricity from renewable energies,[42]with tariffs for STEG to buy back surpluses from self-producers of electricity, [43] has largely diluted STEG's central role. In addition, these liberalizing measures have caused discontent and reticence among civil society and the STEG trade union who feel they are better placed than foreign investors to take charge of this type of project.[44]

Thus, STEG's role is currently limited to ensuring the transmission of electricity, purchasing surplus self-production and authorizing the creation of companies specialized in production for local consumption (transferred to STEG) or for export. Nevertheless, despite this significant reduction in STEG's monopoly, the latter still has a key role to play as a guarantor of national needs. As stipulated in law n° 2015-12 of 11 May 2015: "Projects for the production of electricity from renewable energy for export are carried out under concession contracts but taking into account national renewable energy needs."[45] In addition, in order to grant authorizations to these companies, there is, among other things, an obligation to provide STEG with preliminary evidence to guarantee a minimum percentage of industrial integration of electricity from renewable energies, whether for export[46] or for local production with evidence of the local employability capacity of the project. [47]

However, the Tunisian legislative framework may be abrogated by the restrictions included within the DCFTA proposal. According to Article 7 of the proposal on trade in energy and raw materials, the procedure for granting authorization for the export or production of energy goods must be carried out in accordance with the conditions of the agreement. The proposal on trade in services and investment states, inter alia, that it is not possible for Parties to impose a transfer of technology, a production process or other exclusive expertise, to limit sales of goods on their territory, to reach a given level or percentage of national content, to recruit a given number of their nationals, to limit exports or export sales, etc.

Despite an important set of reforms undertaken in the renewable energy produced electricity sector in Tunisia, which covered by the general DCFTA framework but implemented in parallel to its negotiation, this sector still does not subscribe to DCFTA's free trade values. Private investment in this sector is therefore still not forthcoming. Not satisfied by the extend of the sector's changes, the EU has pushed for what it deems an adequate, transparent and stable legislative framework (i.e. as set out in the DCFTA) that would be capable of further promoting Tunisia's relations with the EU in the energy sector.[48] The EU's current liberal policy encourages further liberalization of the energy sector, a liberalization that provides maximum guarantees to European investors and guarantees the EU

39 Messadi O (2015) Desertec ou le plan B de l'Europe face à la menace russe. Note analytique. Tunisian Observatory of Economy.

40 Idem

41 **http://www.legislation.tn/sites/default/files/fraction-journal-officiel/2015/2015F/038/Tf2015121.pdf**

42 **http://www.legislation.tn/sites/default/files/fraction-journal-officiel/2016/2016F/071/Tf201611233.pdf**

43 These tariffs are set by decision of the Ministry of Energy on 1 June 2010 and revised in 2014

44 **https://www.leconomistemaghrebin.com/2014/07/02/des-agents-de-la-steg-en-greve-le-15-juillet/?fbclid=IwAR2QK9Loq9EH7aoKN2yF-sem-WzChza0niqxEvhHCOj5R9JNglvzqcbD9PCs**

45 Article 24, Section 3. Law n° 2015-12 of 11 May 2015, relating to the production of electricity from renewable energies.

46 Article 26, Section 3. Law n° 2015-12 of 11 May 2015, relating to the production of electricity from renewable energies.

47 Articles 15 and 16. Chapter II of the production of electricity from renewable energy sources for a local consumption with needs to authorization. Government Decree No. 2016 - 1123.

48 Deep and Comprehensive Free Trade Agreement (DCFTA) between Tunisia and the EU (2018). Energy and raw material proposal. Factsheet.

free and secure access to energy. The DCFTA uses the EU's acquis communautaire, and more particularly the European Energy Charter,[49] which is cited as a reference in the proposal on trade in energy and raw materials,[50] even if Tunisia has not signed the Charter.

In response to this situation, further amendments were made in May 2018 by Tunisia's Minister for Energy, who amended the electricity purchase contracts and launched a call for projects under an authorization pattern to convince some European investors, with very modest investments, to finally commit themselves.[51] It was only in 2019 that four projects using wind energy were granted to four foreign investors who will sell electricity to the STEG with fixed feed-in tariffs for 20 years. [52] An investment that will cost STEG a lot in the long term, even if STEG was perfectly capable of investing in this area since it has expertise in electricity production from wind energy.[53][54]

Putting aside the question of the DCFTA, the Tunisia's current legal framework is well-designed to achieve the strategic objectives of the country's energy transition. Based on this framework, it is possible to envision several measures to develop a public policy aimed at better balancing Tunisia's energy mix and to promoting the renewable energy sector. For example, to put in place performance requirements to ensure positive impacts such as hiring and training of local workers, local purchasing, national content, export objectives and links with local businesses.[55] With its natural potential, Tunisia has everything to gain by developing the sector of electricity production from renewable resources through these national companies in order to compete with foreign and transnational companies.

But if the DCFTA is ratified as proposed by the EU, it is impossible to implement these steps, as they are prohibited in the trade in energy and raw materials proposal. The DCFTA therefore limits Tunisia's ability to consolidate its industry before expanding foreign trade. Moreover, the obligations concerning alignment with the acquis communautaire do not allow for the strengthening of regional development, since the entry into force is 5 years after ratification.

It has been shown that changing the direction of economic policies to give private financial markets decisive power over economic decisions as a result of national and international financial deregulation policies has reduced the resources and public mechanisms to respond to economic cycles.[56] This is particularly the case in developing and least-developed countries, which during the 1980s liberalized their trade extensively. Indeed, it has been observed that some countries have trade regimes as open as those of some developed countries. These policies were intended to facilitate economic diversification but, contrary to the expected results, large-scale trade liberalization operations have been accompanied by a greater concentration of exports without the promised development of countries.[57]

In view of the current energy deficit in Tunisia, is it a good idea to orient the country's energy policy towards dependence on the private sector and exports?

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49 https://eur-lex.europa.eu/legal-content/FR/TXT/?uri=LEGISSUM:l27028

50 Article 10. Deep and Comprehensive Free Trade Agreement (DCFTA) between Tunisia and the EU (2018). Energy and raw material proposal. Factsheet.

51 https://www.ilboursa.com/marches/les-energies-renouvelables-le-petrole-tunisien-_15961

52 https://blog.e-electricity.com/fr/tunisie-le-gouvernement-retient-quatre-entreprises-europeennes-pour-la-production-de-lelectricite-renouvelable/?fbclid=IwAR254_OmEaytt0Zq8uH-P8JzvYpw6hbSszuk0kPBOS_tSI6-guJ0qMYM60yY

53 http://www.steg.com.tn/fr/institutionnel/produire.html

54 https://www.inhiyez.com/2019/01/31/https-www-inhiyez-com-2019-01-30-opinion-steg-walid-hassni/

55 Akyüz Y., (2015) Foreign direct investment, investment agreements and economic development: myths and realities. Research Paper. South Centre.

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5. Conclusion

If approved and ratified by the Assembly of the Representatives of the People (ARP), DCFTA would have supra-legislative status. In this case, the entire national legal system would be subordinate to this agreement. Existing laws will have to change to be in line with the European acquis communautaire and the ARP will no longer be able to adopt laws that are contrary to DCFTA or the requirements of European policies and laws. Indeed, in its definition of sovereignty in the energy sector,[58] the DCFTA specifies that it will concern only the choice of whether or not to exploit a resource, but once the choice has been made, the European acquis communautaire will take over.

The ratification of the DCFTA will lead Tunisia to irreversibly abandon its freedom to adopt its own laws to manage its natural resources for national economic development purposes, for the benefit of the EU. Tunisia is the most economically dependent country in the EU's southern neighborhood, which has led to it being classified as a "satellite" country of the EU,[59] meaning that has few negotiating levers to better balance the DCFTA in its favor. Given the above, it is legitimate to question the very worth of such negotiations from the perspective of Tunisia's own development aims.

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