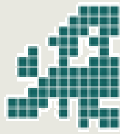

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Newsletter

Latest Legal Updates

In this issue:

- *Conclusions on the prominent "Hellenic Energy Regulation Institute & Florence School of Regulation Conference on European Energy Law and Policy"*
- *M&A Law Firm starts its collaboration with the leading news and analysis service MacroPolis*

Energy

- *The new normative support regime for RES/CHP stations foresees – Attempt to attract further investments in the Greek energy market*
- *The Danish Energy Agency introduces energy calculating model*
- *Germany warns of EU energy targets failure*

State Aid

- *Commission finds Spain's support for private TV broadcasters in breach of EU rules*
- *Commission invites comments on revised criteria for implementing unproblematic state support for ports and airports*
- *Ireland's tax benefits to Apple and their legal assessment*

Antitrust

- *Commission opens in-depth investigation into Luxembourg's tax treatment of GDF Suez (now Engie)*
- *Commission publishes initial findings of e-commerce sector inquiry*

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Conclusions on the prominent "HERI & FSR Conference on European Energy Law and Policy"

The very successful event of the "Hellenic Energy Regulation Institute & Florence School of Regulation Conference on European Energy Law and Policy" took place on Friday, 30 September 2016 at the Commercial and Industrial Chamber of Athens.

World renowned Greek and European scientists with expertise in the field of energy regulation, as well as major institutional representatives of the European electricity and gas markets participated in the Conference as main and key note speakers and, inter alia, analysed key legal and political issues of the energy market in the European Union and Greece. Among the numerous delegates who attended the Conference in person and the more than 3.700 online viewers who watched the Conference through the live broadcast of EnergyPress, many were institutional actors of the European energy market, whilst others were new scientists seeking to keep abreast of the new developments of the law and practice.

The Chairman of the Hellenic Energy Regulation Institute, Professor A. Metaxas stated: "The success of our Conference brings us great joy and satisfaction. I would like to thank again all members of our Institute and the FSR for their systematic work in organising such a interesting scientific event as this one. It is also very important to notice that a Conference with a focus on energy regulation attracted such an active interest, not only from key actors of the Greek energy market but also from the European academic community and many spectators from all around Europe, who participated through the live streaming of EnergyPress. The presence and participation of young scientists and many of our students from the University and from different postgraduate programs on energy regulation, gives a promising message for the development of this scientific field. In its concentrated effort to cultivate and create an interdisciplinary think-tank of open dialogue, the Hellenic Energy Regulation Institute commits to organise other relevant initiatives in the future, while it confirms that a publication of the written contributions of the invited speakers of the Conference will follow shortly. "

Audiovisual key highlights of this important Conference will be posted in Energypress (www.energypress.gr) in due course.

M&A Law Firm starts its collaboration with the leading news and analysis service MacroPolis

Metaxas & Associates Law Firm is pleased to announce its collaboration with MacroPolis, the leading independent analysis service providing daily insight on key political, economic and social developments in Greece. Through this collaboration and as part of its broader competence, M&A Law Firm aims to inform foreign and domestic businesses and investors on latest important legal developments concerning Greek and European markets as well as on the regulatory framework crucial for the realization of investments and the specification of market strategies.

For further information, please visit our new dedicated column/page **here**.

Energy

The new normative support regime for RES/CHP stations foresees - Attempt to attract further investments in the Greek energy market

I. Preliminary remarks

In early August 2016, the Parliament passed the Law No. 4414 on the "New support scheme for electricity producers of Renewable Energy Sources (RES) and Combined Heat and Power High Performance (CHP) stations - Provisions for legal and functional separation of supply and distribution industries in the market of natural gas and other provisions "(Gov. A'139 / 09.08.2016), which, inter alia, regulates highly important issues for the Greek energy market as regards the electricity stations generating power from RES and CHP.

The new regime falls within the broader ambit of the EU common policy towards tackling climate change and in particular towards achieving the target of 20% shares of RES in the growth domestic energy consumption of the energy mix. In the context of achieving national and EU targets, the new scheme adopts the requirements of section 3.3 of the EU “Guidelines for State aid in the field of environment and energy for 2014-2020” with an aim to expand and support further investment of RES in Greece.

Aiming to improve the viability of RES development and investment, this scheme seeks to resolve the issue of the guaranteed price and the consequently long delays in payments.

II. Changes in the electricity sales process from RES

The new law seeks to establish a framework for a smooth transition from the old system of fixed retail prices (feed-in-tariffs) to the new system of differential increments and tendering (feed-in-premium).

The new regime is based on the development of a new support mechanism for the operation of RES (operating aid), which provides a premium in addition to the price shaped in the wholesale electricity market. This increase will be granted for the validity support period of RES and CHP of each power station and will take the form of a differential value (FiP), taking into consideration the revenue resulting from participation in the electricity market.

The incremental increase was adopted on a station category level (sliding premium) and not a steady increase (fixed premium), so that the financial assistance mechanism is not affected by variations of the future price in the wholesale market. This attempts to ensure control and a predetermined size of the total income received by certain stations from RES and CHP, targeted to minimize both eventual phenomena of overcompensation and undercompensation of electricity produced from RES and CHP.

More specifically, the power stations from RES and CHP put into operation in the Interconnected System from 1.1.2016 are included in the support scheme in the form of operating aid and on the basis of a Price Differential Compensation (Differential Increment) for the electricity they produce. The differential premium is calculated on a monthly basis, whereas the validation, billing and settlement of transactions involving the differential increase processes will be determined by decision of the Minister of Environment and Energy, which is expected to be issued within three months from the entry into force of this Act.

III. Reforms in the RES Special Account

Of fundamental value is also the legislative intervention to correct the major lingering structural dysfunction of financing of the RES support mechanism, as articulated in article 23 of the said Law. This new article finally solves the ongoing deficit problem of the RES Special Account, by providing a new revenue source, that of the Electricity Suppliers (or charge representatives), which reflects the costs they used to avoid due to the presence and penetration of RES in the electricity market.

The provisions of the new law aim at creating a favorable environment for further future investments on RES/CHP stations. It remains to be seen if this objective will be achieved given that retroactive measures

adopted in the past have severely undermined the overall credibility of the support and financing mechanism for RES.

The Danish Energy Agency introduces energy calculating model

The Danish Energy Agency has announced plans to introduce a new model which can be used in the country's international co-operative efforts regarding energy and climate.

The model, which has been designed to aid in the exploitation of economic advantages relating to the energy sector whilst also taking climate change into account, will enable the comparison of potential costs when energy consumption is reduced and when the supply of energy is extended

This is important in the context of future energy and climate discussions as, in the developing world in particular the extension of the energy supply is seen as integral to supporting growth and enhancing living conditions. To ensure that the development of the energy sector in these countries is achieved in a sustainable way – and, moreover, to ensure that international climate commitments are met – many are looking to Denmark for ideas on best practice.

This is perhaps due to the fact that the Danes have been able to consistently increase their economic growth whilst simultaneously reducing both energy consumption and the nation's impact on the climate impact. One important element in the Danish approach has been the priority placed on energy efficiency across multiple sectors.

The Danish Energy Agency presented its 'levelized cost of energy' model (LCoE Calculator) at COP21, which, it said, can be used to help estimate individual countries' economic development, as well as the potential impact that green solutions – as compared to conventional solutions – may have both with regard to the economy and any environmental impacts.

The Danish Energy Agency is now expanding this tool in order to be able to make price comparisons with regard to the extension of a given energy supply with the price of reducing energy consumption via investments in energy efficiency.

The objective here is to provide decision-makers in Denmark's partner countries with a broader picture of their economies and, additionally, to render visible the possibilities generated by both a more sustainable development of their energy sector and of enhanced energy efficiency.

Germany warns of EU energy targets failure

Germany has warned that EU member states could fail to meet new energy efficiency targets for 2030 if they are not made mandatory.

The German government has said that maintaining non-binding goals beyond 2020 guarantees member states will have the flexibility to adjust their energy efficiency policy to national circumstances. Berlin said: "[This approach] entails the risk of failure to meet targets and can lead to friction between member states and the EU Commission. The German government acknowledged that binding targets and mechanisms for 2030 would also require greater political effort to negotiate, which could result in delays.

The country outlined its concerns in a discussion paper, produced by its economy and energy ministry, which was assessing Germany's progress as it moves towards its own national goal to cut energy consumption by half by 2050 compared with 2008 use. The discussion paper noted Germany's recent achievements in energy efficiency – with primary consumption dropping by 8.7% between 2008 and 2014 – but added that progress would be needed to accelerate the country to meet its own 50% savings goal for 2050.

According to the German government, a move to prioritise energy efficiency in all sectors combined with a demand-led approach within the energy system – called the 'energy efficiency first' principle – could help speed up the transition.

Commenting on the document, Stefan Scheuer, Secretary General of the industry group Coalition for Energy, said: "The principle of putting energy efficiency first is gaining ground in member states, and expectations are increasing for the commission to take the lead."

The European Commission will officially publish its energy proposals in December 2016.

State Aid

Commission finds Spain's support for private TV broadcasters in breach of EU rules

The European Commission has found that a Spanish scheme compensating terrestrial private broadcasters for carrying out parallel broadcasting during the digitalization of the terrestrial television signal is in breach of EU state aid rules. As no aid has been granted yet, no recovery will be required.

Margrethe Vestager, Commissioner in charge of competition policy, said: "This measure provided a selective advantage to terrestrial broadcasters and platform operators over other available technologies. This goes against the principle of technological neutrality and does not appear necessary or proportionate. Spain has already completed the digital frequency switch with no state aid having been granted. Therefore, no recovery will be required."

The switch from analogue to digital broadcasting released radio frequency spectrum previously used for TV broadcasting (the so called "digital dividend"). In this context, Spain imposed a "simulcast" obligation on broadcasters, requiring them to broadcast both analogue and digital signals during the transitional period, in order to avoid service disruptions for viewers.

In 2011, the Spanish authorities notified plans to compensate broadcasters for additional costs incurred due to this "simulcast" obligation. In April 2012, the Commission opened an in-depth state aid investigation. In the course of the investigation, Spain withdrew part of the notification concerning public broadcasters, as compensation in their favour was already granted as part of their public service mission; the investigation continued solely for private broadcasters. Today's decision therefore concerns only them.

EU state aid rules allow Member States to support the reallocation of radio spectrum and to mitigate its impact on operators. They can, in particular, offer compensation for costs that operators, in the case of a proven market failure, could not be expected to carry themselves absent the need for the migration. To avoid any undue distortion of competition, such measures must be necessary for reaching the assigned objective. The aid granted needs to be proportionate to the goals and the measure must be technologically neutral, in other words the subsidy must be open to all operators.

The Commission's investigation confirmed that Spain's support for the transition from analogue to digital TV broadcasting was offered only to digital terrestrial (DTT) broadcasters to the detriment of alternative platforms, such as satellite, cable or IPTV (TV over Internet Protocol). Spain did not substantiate why the principle of technological neutrality would not be justified in this case. Any exception to this principle would have to be duly justified, for example, on the basis of an ex ante independent study, combined with a market consultation, demonstrating the efficiency of the DTT platform over alternative platforms.

Spain also failed to demonstrate that public support for the frequency reallocation was needed to ensure a smooth transfer from analogue to digital broadcasting. On the contrary, the Commission found that private broadcasters would have ensured simulcast in any event, so as not to lose viewers. Moreover, Spain provided no evidence, such as an independent cost study, showing that the aid was proportionate.

Therefore, the Commission concluded that the measure selectively favoured terrestrial broadcasters as well as platform operators to the detriment of broadcasters and operators representing alternative platforms and thereby distorted competition in the Single Market. As no aid has been granted yet, no recovery will be required.

Spain has now completed the frequency switch and private broadcasters have ensured and financed the simulcast proactively, with no state aid having been needed or granted.

Commission invites comments on revised criteria for implementing unproblematic state support for ports and airports

The European Commission invites comments on its proposal to revise the criteria for exempting certain investment aid for ports and airports from prior Commission scrutiny under EU state aid rules, by extending the 2014 General Block Exemption Regulation (GBER). It aims to facilitate public investments that can create jobs and growth whilst preserving competition.

A first public consultation on draft provisions earlier this year. In light of views and comments received, the Commission has updated the proposal. Commissioner Margrethe Vestager, in charge of competition policy, stated: "We have received valuable input to design rules that ensure that public investments can go ahead as quickly as possible without distorting competition in the Single Market. This is important for ports and airports that play a central role for economic growth and regional development." The initiative

aims to reduce administrative burdens for public authorities and other stakeholders in the context of the Regulatory Fitness and Performance of EU Legislation (REFIT) agenda. It forms part of the Commission's effort to focus State aid control on bigger cases that genuinely impact competition in the Single Market, to the greatest benefit of consumers. It complements several initiatives the Commission has taken over the past two years in addition to the revisions of the GBER, including the Notion of Aid Notice as well as a series of State aid decisions to clarify what public support measures fall outside the scope of EU State aid control.

Ireland gave illegal tax benefits to Apple worth up to €13 billion

The European Commission has concluded that Ireland granted undue tax benefits of up to €13 billion to Apple. This is illegal under EU state aid rules, because it allowed Apple to pay substantially less tax than other businesses. Ireland must now recover the illegal aid.

Commissioner Margrethe Vestager, in charge of competition policy, said: *"Member States cannot give tax benefits to selected companies – this is illegal under EU state aid rules. The Commission's investigation concluded that Ireland granted illegal tax benefits to Apple, which enabled it to pay substantially less tax than other businesses over many years. In fact, this selective treatment allowed Apple to pay an effective corporate tax rate of 1 per cent on its European profits in 2003 down to 0.005 per cent in 2014."*

Following an in-depth state aid investigation launched in June 2014, the European Commission has concluded that two tax rulings issued by Ireland to Apple have substantially and artificially lowered the tax paid by Apple in Ireland since 1991. The rulings endorsed a way to establish the taxable profits for two Irish incorporated companies of the Apple group (Apple Sales International and Apple Operations Europe), which did not correspond to economic reality: almost all sales profits recorded by the two companies were internally attributed to a "head office". The Commission's assessment showed that these "head offices" existed only on paper and could not have generated such profits. These profits allocated to the "head offices" were not subject to tax in any country under specific provisions of the Irish tax law, which are no longer in force. As a result of the allocation method endorsed in the tax rulings, Apple only paid an effective corporate tax rate that declined from 1% in 2003 to 0.005% in 2014 on the profits of Apple Sales International.

This selective tax treatment of Apple in Ireland is illegal under EU state aid rules, because it gives Apple a significant advantage over other businesses that are subject to the same national taxation rules. The Commission can order recovery of illegal state aid for a ten-year period preceding the Commission's first request for information in 2013. Ireland must now recover the unpaid taxes in Ireland from Apple for the years 2003 to 2014 of up to €13 billion, plus interest.

In fact, the tax treatment in Ireland enabled Apple to avoid taxation on almost all profits generated by sales of Apple products in the entire EU Single Market. This is due to Apple's decision to record all sales in Ireland rather than in the countries where the products were sold. This structure is however outside the remit of EU state aid control. If other countries were to require Apple to pay more tax on profits of the two companies over the same period under their national taxation rules, this would reduce the amount to be recovered by Ireland.

Antitrust

Commission opens in-depth investigation into Luxembourg's tax treatment of GDF Suez (now Engie)

The European Commission has opened an in-depth investigation into Luxembourg's tax treatment of the GDF Suez group (now Engie). The Commission has concerns that several tax rulings issued by Luxembourg may have given GDF Suez an unfair advantage over other companies, in breach of EU state aid rules.

The Commission will assess in particular whether Luxembourg tax authorities selectively derogated from provisions of national tax law in tax rulings issued to GDF Suez. They appear to treat the same financial transaction between companies of GDF Suez in an inconsistent way, both as debt and as equity. The Commission considers at this stage that the treatment endorsed in the tax rulings resulted in tax benefits in favour of GDF Suez, which are not available to other companies subject to the same national taxation rules in Luxembourg.

Margrethe Vestager, Commissioner in charge of competition policy, said: "*Financial transactions can be taxed differently depending on the type of transaction, equity or debt - but a single company cannot have the best of two worlds for one and the same transaction. Therefore, we will look carefully at tax*

rulings issued by Luxembourg to GDF Suez. They seem to contradict national taxation rules and allow GDF Suez to pay less tax than other companies."

As from September 2008, Luxembourg issued several tax rulings concerning the tax treatment of two similar financial transactions between four companies of the GDF Suez group, all based in Luxembourg. These financial transactions are loans that can be converted into equity and bear zero interest for the lender. One convertible loan was granted in 2009 by LNG Luxembourg (lender) to GDF Suez LNG Supply (borrower); the other in 2011 by Electrabel Invest Luxembourg (lender) to GDF Suez Treasury Management (borrower).

The Commission considers at this stage that in the tax rulings the two financial transactions are treated both as debt and as equity. This is an inconsistent tax treatment of the same transaction. On the one hand, the borrowers can make provisions for interest payments to the lenders (transactions treated as loan). On the other hand, the lenders' income is considered to be equity remuneration similar to a dividend from the borrowers (transactions treated as equity).

The tax treatment appears to give rise to double non-taxation for both lenders and borrowers on profits arising in Luxembourg. This is because the borrowers can significantly reduce their taxable profits in Luxembourg by deducting the (provisioned) interest payments of the transaction as expenses. At the same time, the lenders avoid paying any tax on the profits the transactions generate for them, because Luxembourg tax rules exempt income from equity investments from taxation.

The final result seems to be that a significant proportion of the profits recorded by GDF Suez in Luxembourg through the two arrangements are not taxed at all.

Commission publishes initial findings of e-commerce sector inquiry

The European Commission's preliminary report on its e-commerce sector inquiry confirms the fast growth of e-commerce in the EU and identifies business practices that might restrict competition and limit consumer choice.

Competition Commissioner Margrethe Vestager said: *"E-commerce has become important for consumers and it has significant impact on the business and strategies of companies. Businesses should have the freedom to determine their sales strategies online. At the same time, antitrust authorities must*

ensure that they do not engage in anti-competitive business practices. These practices can prevent European consumers from reaping the full benefits of e-commerce in terms of greater choice and lower prices."

The Commission launched the e-commerce sector inquiry in May 2015 in the context of its Digital Single Market strategy. One of the main parts of the Digital Single Market strategy is to ensure better access for consumers and businesses to goods and services. The sector inquiry complements the Commission's legislative proposals in this regard. The objective of the sector inquiry is to allow the Commission to identify possible competition concerns in European e-commerce markets. During the inquiry, the Commission has gathered evidence from nearly 1 800 companies operating in e-commerce of consumer goods and digital content and has analysed around 8 000 distribution contracts. The Preliminary Report published today presents the Commission's initial findings regarding these issues.

The Report identifies business practices that may raise competition concerns. The Commission may open case specific investigations to ensure compliance with EU rules on restrictive business practices and abuse of dominant market positions.

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