



METAXAS & ASSOCIATES
ATTORNEYS AT LAW

NEWSLETTER - *Latest legal updates*

Issue 19

March 2010

In this issue:

ENERGY

- Commission announces the creation of two new Directorates General for Energy and Climate Action
- ERGEG publishes status review of the liberalization and implementation of the energy regulatory framework
- ERGEG publishes final guidelines on good practice on electricity grid connection and access
- Appeal against Greek lignite commitments decision

STATE AID

- Commission takes Greece to Court for failure to recover illegal tax exemptions
- Commission publishes external report on counterfactual scenarios to restructuring aid
- Commission approves prolongation of Greek support package for credit institutions
- Commission opens in-depth state aid investigation into preferential electricity tariffs for Aluminium of Greece

PUBLIC PROCUREMENT

- Commission sends Greece a reasoned opinion about award of contract for collection of waste in Attica

ENERGY

Commission announces the creation of two new Directorates General for Energy and Climate Action

The European Commission decided to divide the Directorate General (DG) for Energy and Transport into two new Directorates General: DG Energy and DG Climate Action.

The Energy DG, with its new Director General Philip Lowe, currently Director General in DG Competition, will combine the departments of the former Energy and Transport DG dealing with energy issues and the Task Force Energy, which will be transferred from the External Relations DG.

The Climate Action DG will be created from the relevant activities in DG Environment, DG External Relations and DG Enterprise and Industry related to climate change. Its new Director General will be Jos Delbeke.

The departments responsible for transport policy will remain in the renamed Mobility and Transport DG.

EREGG publishes status review of the liberalization and implementation of the energy regulatory framework

The European Regulators Group for Electricity and Gas (EREGG) published on 14 January 2010 a review on the general developments in the European energy market during 2008. This assessment is based on the national regulatory authorities' national reports. The reports showed insignificant progress on most of the main deficiencies reported in last year's status review. There is still lack in competition in retail electricity and gas markets. EREGG finds that "insufficient unbundling of network companies remains a big obstacle to competition and security of supply". Also, the separation of the distribution system operator from the supply arm of vertically-integrated firms is often not very clear. Although national regulators are promoting better customer information so that consumers can be more active in the

market, it seems that lack of transparency of billing and metering, and dispute settlements still remain a problem.

However, some progress has been made in the field of wholesale market integration in the electricity sector.

EREG publishes final guidelines on good practice on electricity grid connection and access

The final version of the European Regulators Group for Electricity and Gas (EREG)'s guidance on good practice on electricity grid connection and access was published on 15 January 2010. This document specifies the grid connection and access conditions that should apply to all the users of electricity transmission and distribution grids across the EU. A special document (GGP on Operational Security) also contains issues of coordinated planning and operation of the EU transmission grids.

These guidelines provide a technical framework for grid connection and access and are considered to be a useful input to the framework guidelines for grid connection and access to be developed by the new Agency for the co-operation of national energy regulators.

The guidelines include principles of voltage and frequency quality, together with provisions for sufficient transparency and information.

Appeal against Greek lignite commitments decision

On 16 January 2010, details were published of an appeal brought by Greek Public Power Corporation (PPC) against the European Commission's decision to accept commitments from Greece to ensure fair access to Greek lignite deposits. The commitments were given in order to comply with a Commission decision finding that Greece had infringed Article 106 TFEU in conjunction with Article 102 TFEU by maintaining the quasi-exclusive rights for access to lignite in favour of PPC.

STATE AID

Commission takes Greece to Court for failure to recover illegal tax exemptions

The European Commission refers Greece to the Court of Justice of the European Union, based on Article 108(2) TFEU, for failing to comply with its decision of July 2007 that ordered Greece to recover unlawfully granted aid to companies through illegal tax exemptions.

In 2003 and 2004 many companies, based on Article 2 of the Greek Law 3220/2004, were allowed to deduct up to 35% of profits from their tax base for several projects such as production of textile materials, manufacturing of automobiles, energy production and mining. The companies had to use their tax exempt income to finance expenses, such as the purchase, construction and expansion of plants, buildings and equipment, the purchase of vehicles, relocation, leasing costs, training and others. Because of the fact that the aid scheme was part of the Greek tax system, companies could claim this benefit directly from the tax authorities.

The Commission found that the state aid scheme implemented by Greece under Article 2 of the Greek Law 3220/2004, which had not been notified to the Commission, was incompatible with the EU state aid rules and thus adopted a negative decision, as regards this measure, on 18 July 2007. The decision required Greece to immediately recover the incompatible aid, including interest, from the beneficiaries, except from the aid that fulfilled all the conditions of the de-minimis and block exemption regulations at the time of its granting.

Greek authorities have failed until now to provide the Commission with information confirming recovery of the unlawfully granted aid and the Commission has therefore decided to refer Greece to the Court of Justice.

EU Commission publishes external report on counterfactual scenarios to restructuring aid

European Commission published a report made by external consultants (Oxera) on counterfactual scenarios to restructuring state aid. The report named "Should aid be granted to firms in difficulty?", aims to inform the Commission about what might happen to a firm that is the intended recipient of restructuring aid in the absence of such aid. It tests the policy presumption that the grant of restructuring aid saves a considerable amount of jobs and activities that would otherwise disappear, based on cases of large and medium-sized European firms that have experienced financial difficulty or financial distress.

These cases reflect the Commission's requirement of tight control of state aid, that should be allowed only in circumstances where it does not act against the Community interest.

The report analyses the relationship between the characteristics of a firm prior to falling into difficulty/distress and survival rates. It was found for example that 77% of firms survived three years after the onset of distress. Employment falls on average by around 30% of its pre-distress level and revenues fall by almost 20% over three years post-distress, with the trend continuing over the fourth and fifth years after the onset of distress.

The report examines useful empirical findings that can be used by the Commission to construct counterfactual scenarios for the analysis of restructuring aid cases.

Commission approves prolongation of Greek support package for credit institutions

The European Commission has authorised, under EU state aid rules, the prolongation until 30 June 2010 of the Greek support package for credit institutions. The measures initially approved on 19 November 2008 and

prolonged once on 18 September 2009 consist in a recapitalisation scheme, a guarantee scheme and support through the issuance of Greek State special purpose securities to credit institutions. The extended measures are limited in time and scope and represent, according to the Commission, an appropriate means of remedying a serious disturbance in the Greek economy. The Commission concludes that they are compatible with Article 107(3)(b) TFEU.

Commission opens in-depth state aid investigation into preferential electricity tariffs for Aluminium of Greece

On 27 January 2010, the European Commission has announced the opening of an in-depth state aid investigation into electricity tariffs granted by the Greek state-owned Public Power Corporation to Aluminium of Greece. It will be examined whether electricity is supplied below the market price. The Commission will also investigate allegations that the state-owned Public Gas Corporation paid the construction costs of a gas pipeline belonging to Aluminium of Greece. The Commission intends to examine whether Aluminium of Greece received an unfair economic advantage over its competitors.

In July 2008 the Commission received two complaints concerning incompatible state aid granted from Greece to the aluminium production company Aluminium of Greece through several privileges, namely tax exemptions, deferral of taxation obligations, lower electricity prices, etc. The Commission's preliminary view is that those privileges constituted state aid according to EU state aid rules. However, those privileges were put into force in the context of the company's establishment in 1960, long before Greece's EU accession in 1981. Most of them were not modified after the accession and constitute therefore existing aid, which need not be repaid.

The complainants also allege that Greece granted illegal aid to the company by allowing it to sell on the market electricity generated by its subsidized power plant. Greece also granted illegal aid to the company by paying part of

the cost of the construction of a high-pressure natural gas pipeline to connect the company's co-generation power plant with the national gas transmission grid. Despite the Commission's repeated requests, Greece has to date failed to provide any information on this allegation. The Commission will investigate whether the state acted as a market economy vendor when engaging into energy-related transactions with Aluminium of Greece.

PUBLIC PROCUREMENT

Commission sends Greece a reasoned opinion about award of contract for collection of waste in Attica

The European Commission sent a reasoned opinion to Greece concerning the tendering procedure launched by the Health Procurement Committee for the award of a public services contract concerning the management of hazardous medical waste in the 1st Regional Health service in Attica (1 DYPE ATTIKIS). The Commission has asked Greece to review this case, as it is considered that the Greek contracting authority breached Directive 2004/18 by using incorrectly the negotiated procedure without prior publication of a contract notice. The matter may be referred to the European Court of Justice in Luxembourg if the Commission does not receive a satisfactory reply from Greece. The Commission can also request that the Court impose a fine on the country concerned if it does not comply with the Court's ruling.

For further information you can contact:



METAXAS & ASSOCIATES
ATTORNEYS AT LAW

Offices

Athens

80 Ippokratous Str.

106 80 Athens, Greece

Tel.: +30 210 33 90 748

Fax.: +30 210 33 90 749

e-mail: info@metaxaslaw.gr

Berlin

Fritz-Reuter-Str. 5

10827 Berlin, Germany

Tel.: +49 177 273 17 83

www.metaxaslaw.gr

All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, or stored in any retrieval system of any nature without prior permission. Application for permission for other use of copyright material including permission to reproduce extracts in other published works shall be made to the publishers. Full acknowledgment of author, publisher and source must be given.

Nothing in this newsletter shall be construed as legal advice. The newsletter is necessarily generalised. Professional advice should therefore be sought before any action is undertaken based on this newsletter.