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NEWSLETTER - Latest legal updates

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ENERGY

Directive on Energy Efficiency

The cheapest energy is the one we do not consume. The countdown to achieve Europe's 20% energy efficiency target for 2020 has started. Without the Energy Efficiency Directive, Europe would only achieve approximately 10% out of 2020. With the legally binding measures introduced by the energy efficiency directive, it is estimated that the EU could reach approximately 17%.

The Energy Efficiency directive brings forward legally binding measures to step up Member States efforts to use energy more efficiently at all stages of the energy chain – from the transformation of energy and its distribution to its final consumption. These include:

- the legal obligation to establish energy efficiency obligations schemes or policy measures in all member states to drive energy efficiency improvements in households, industries and transport sectors,
- an exemplary role to be played by the public sector,
- a right for consumers to know how much energy they consume,
- to encourage energy audits for SMEs and households and an obligation for large companies to assess their energy savings possibilities,
- increased efficiency in energy generation, transmission and distribution.

Improved energy efficiency will help the EU economy to be more competitive, and create growth and up to 400 000 additional jobs.

The Directive on Energy Efficiency can be found:

http://ec.europa.eu/energy/efficiency/eed/eed_en.htm

Nuclear Safety: Greek, Polish and Portuguese legislation is not in line with EU law

Nuclear safety is paramount to EU citizens and it is of major concern for EU law-makers. The EU nuclear safety directive sets comprehensive and legally binding rules that ensure the safety of all nuclear installations all over the EU. In the light of on-going safety checks of all nuclear power plants it is essential that the directive is properly implemented in all Member States. Together this will enhance the EU nuclear safety regime and guarantee that workers of nuclear installations and general public as well as the environment will be protected against any risk of radioactive contamination.

The directive had to be implemented by the Member States by 22 July 2011. However, Greece, Poland and Portugal have not yet informed the European Commission of the full transposition of the Directive into their national legislation. Consequently, the Commission has decided to send a reasoned opinion to these Member States. The three Member States will have two months to respond. If they fail to comply with their legal obligations the Commission may refer them to the Court of Justice of the European Union and ask for financial penalties.

The nuclear safety directive creates a comprehensive and legally binding framework for the safety of civilian nuclear installations, such as nuclear power plants, research reactor facilities or spent fuel storage facilities. It defines basic principles and obligations to ensure and enhance nuclear safety in the EU.

The prime responsibility for nuclear safety lies with licence holders. Member States have to set up national framework to allocate responsibilities and coordinate between state bodies. The directive enhances the role and independence of national regulatory authorities. Also, Member States are required to encourage a high level of transparency of regulatory actions and to ensure regular independent safety assessments of all nuclear installations on their territory.

Nuclear safety in the EU has been based on the requirements of the main international instruments, namely the Convention on Nuclear Safety and the Safety Fundamentals established by the International Atomic Energy Agency (IAEA). The nuclear safety directive makes these requirements legally binding for all EU Member States.

The contribution of renewable energy up to 12.4% of energy consumption in the EU27 in 2010

In 2010, energy from renewable sources was estimated1 to have contributed 12.4% of gross final energy consumption in the EU27, compared with 11.7% in 2009 and 10.5% in 2008. The 2009 Directive on renewable energy2 set individual targets for all Member States, such that the EU will reach a 20% share of total energy consumption from renewable sources by 2020. These targets take into account the Member States' different starting points, renewable energy potential and economic performance.

These figures are published by Eurostat, the statistical office of the European Union in connection with the EU Sustainable Energy Week3 from 18 to 22 June 2012, which promotes energy efficiency and renewable energy.

Highest share of renewables in Sweden, Latvia, Finland, Austria and Portugal

The highest share of renewable energy in total consumption in 2010 was found in Sweden (47.9% of renewable energy sources in total consumption), Latvia (32.6%), Finland (32.2%), Austria (30.1%) and Portugal (24.6%), and the lowest in Malta (0.4%), Luxembourg (2.8%), the United Kingdom (3.2%) and the Netherlands (3.8%).

Between 2006 and 2010, all Member States increased their share of renewable energy in total consumption. The largest increases were recorded in Estonia (from 16.1% in 2006 to 24.3% in 2010), Romania (from 17.1% to 23.4%), Denmark (from 16.5% to 22.2%), Sweden (from 42.7% to 47.9%) and Spain (from 9.0% to 13.8%).

Source: **http://www.photon-international.com/newsletter/document/66465.pdf**

Commission confirms market integration and the need for growth beyond 2020

The European Union is committed to achieving a 20% share of renewable energy by 2020. This goal can be reached only in a cost-efficient manner if all policies currently in place are implemented across all Member States and if support schemes converge. In the Communication adopted, the Commission is therefore calling for a more coordinated European approach in the establishment and reform of support schemes and an increased use of renewable energy trading among

Member States. Moreover, the fact that investors need regulatory certainty makes crucial to start discussing the future and building a solid framework beyond 2020. Communication has indicated four main areas where efforts should be stepped up until 2020 to achieve the renewable energy goals whilst being cost-efficient:

- Energy market: The Commission insists on the need to complete the internal energy market and acknowledges the need to address power generation investment incentives in the market to allow for a smooth integration of renewables into the market.
- Support schemes: The Commission favours schemes that encourage cost reductions and avoid over compensation. It also calls for support schemes to be more consistent across Member States in order to avoid unnecessary barriers.
- Cooperation mechanisms. The Commission encourages an increased use of the cooperation mechanisms contained in the Renewable Energy Directive. The cooperation mechanisms allow Member States to achieve their national binding targets by trading renewable energy between them. This means that one Member States buys for example wind or solar energy from another Member State or from a third country outside the EU. This can be cheaper than producing solar or wind in the home country.
- Energy cooperation in the Mediterranean. The Commission suggests improvements to the regulatory framework and stresses that an integrated regional market in the Maghreb would facilitate large-scale investments in the region and enable Europe to import renewable electricity.

For the time beyond 2020, the Communication acknowledges that without a suitable framework renewable energy growth will slump. Such a framework has to allow for more innovation and bring down cost to make renewables a promising sector of investment for growth. It therefore proposes to start the process on preparing future policy options and milestones for 2030.

STATE AID

Commission gives conditional approval to aid component in regulated electricity tariffs in France

The European Commission has approved the State aid contained in regulated electricity tariffs for large and medium-sized energy consumers in France, subject to compliance with certain conditions relating to the reform of the French electricity market, an annual review of the standard tariffs, and, subsequently, their disappearance at the end of 2015. The tariffs in question are the "green" and "yellow" regulated standard tariffs for companies and the "TARTAM" tariffs (transitional market adjustment tariffs) that applied under the system in place between 2006 and 2011, now repealed. The Commission takes the view that the tariffs are compatible with the EU State aid rules in view of the fact that they will help to limit the power of the incumbent operator over a transitional period.

On completion of an in-depth investigation opened in June 2007, the Commission concluded that the aid contained in these tariffs was compatible with the internal market on certain conditions, the main ones being:

(i) the introduction of regulated access for competitors to nuclear power from EDF's existing nuclear power stations (the "ARENH" scheme) up to a ceiling of 100 terawatt hours,

(ii) maintenance of the ARENH price at its current level of EUR 42 per MWh pending Commission approval of a methodology to be proposed by France for setting the price, and

(iii) a gradual shift to cost-based pricing every year after summer 2012 until the "green" and "yellow" standard prices are completely eliminated at the end of 2015.

The Commission concluded that, managed in this way, the tariffs were compatible with the internal market because, given EDF's leading position on the French energy market, the aid that was provided through regulated tariffs could play a transitional role in limiting the market power of the incumbent operator. The ARENH ceiling represents approximately 25% of EDF's nuclear power generation. The gradual rise in the tariffs based on underlying supply costs, leading to the elimination of regulated tariffs, together with the sourcing opportunities for alternative suppliers under the ARENH arrangements, should promote real competition and give businesses a real choice. The "blue tariffs" for households and small businesses did not fall within the scope of this investigation and so are not covered by the decision.

Commission temporarily approves aid for the resolution of Greek T Bank

The European Commission has approved under EU state aid rules, for a period of six months, around €680 million of state support granted by the Hellenic Deposit and Investment Guarantee Fund ("HDIGF") to facilitate the acquisition of the economic activities of the Greek T Bank by Hellenic Postbank in the context of T Bank's resolution. The Commission approved the measure in order to preserve financial stability, before it takes a final decision on the restructuring of Hellenic Postbank.

Commission Vice President in charge of competition policy Joaquín Almunia said: "When a small bank is in difficulty, selling its good assets and liabilities to a larger bank is often an appropriate solution.. The Commission made sure that the aid granted in that context was restricted to the minimum necessary to compensate the buyer for the lower value of the assets transferred as compared to the transferred liabilities."

On 17 December 2011, the Bank of Greece ("BoG") proceeded with the resolution of T Bank through an auction, which resulted in the transfer of its assets and liabilities to Hellenic Postbank, and the withdrawal of T Bank's license, in accordance with the Greek resolution law. T Bank was put in liquidation. According to the BoG, the fair value of the liabilities transferred from T Bank to Hellenic Postbank amounted to approximately €2.16 billion and the fair value of the transferred assets amounted to approximately €1.48 billion. The difference between the two amounts of approximately €680 million was covered by the resolution branch of the HDIGF. The Commission concluded that this intervention constitutes State aid within the meaning of Article 107(1) TFEU.

The Commission found that the intervention by the HDIGF was necessary to maintain financial stability on the Greek banking markets, in accordance with Article 107(3)(b) of the Treaty on the Functioning of the EU (TFEU) that allows to grant aid to remedy a serious disturbance in the economy of a Member State. The Commission therefore approved the measure for a period of six months. If the Greek authorities submit to the Commission, within that six-month period, an updated restructuring plan for Hellenic Postbank which takes into account the integration of T Bank's activities into Hellenic Postbank, this temporary authorisation will be automatically prolonged until the Commission reaches a final decision on Hellenic Postbank´s restructuring plan.

Background

T Bank is the rebrand of Aspis Bank, a small bank established in 1992. Aspis Bank had a number of problems in the past, e.g. a low capital base. On 17 December, 2011 the Bank of Greece proceeded with the resolution of T Bank through a transfer order of its assets and liabilities to Hellenic Postbank, which was already a shareholder of T Bank (with a share of around 32.9%).

Hellenic Postbank is the sixth biggest Greek domestic bank and was established in 1900. In May 2009, Hellenic Postbank received a capital injection of approximately €225 million (corresponding to approximately 2.9% of the bank's risk weighted assets at that time) under the Greek recapitalisation scheme which was approved by the Commission on 19 November 2008 and subsequently prolonged. The bank also received guarantees under the Greek guarantee scheme which was approved by the Commission also on 19 November 2008 and subsequently prolonged.

Commission launches major initiative to modernise state aid control

The European Commission has adopted a Communication on State Aid Modernisation (SAM), setting out the objectives of an ambitious reform package. In the broader context of the EU's agenda to foster growth, state aid policy should focus on facilitating well-designed aid targeted at market failures and objectives of common European interest. The Commission also aims at focusing its enforcement on cases with the biggest impact on the internal market, streamlining rules and taking faster decisions. The Communication identifies a number of actions with a view to implementing these objectives. The main elements of the reform shall be in place by the end of 2013.

Joaquín Almunia, Commission Vice President in charge of competition policy, said: "Economic forecasts currently indicate that growth in the EU will remain low for some time. In this environment Europe must tap the full potential of a competitive internal market and, in a context of fiscal consolidation, governments must focus their spending on growth-enhancing priorities. I expect our state aid reform to help public authorities make more efficient use of scarce public resources and design public support to firms so that it helps achieve the EU's growth objectives while limiting competition distortions."

The Communication on State Aid Modernisation launches a far-reaching reform process and identifies three main and closely linked objectives.

First, state aid control shall support sustainable growth and contribute to improving the quality of public spending by discouraging aid that does not bring real added-value and distorts competition. For this purpose, experience developed in the context of State aid control could be embedded in the EU Semester recommendations to Member States. Aid shall support flagship initiatives of the Europe 2020 strategy for smart, sustainable and inclusive growth in a pro-competitive way, maintaining a level playing field in the internal market. To this end, the Commission will develop common principles for the compatibility assessment of national support projects and revise and streamline some existing texts, such as the Environmental, Regional or Risk Capital Guidelines, as well as the Guidelines for the Rescue & Restructuring of firms.

Second, state aid enforcement shall focus more on cases with the biggest impact on the internal market. This will include stronger scrutiny of large and potentially distortive aid as well as enquiries by sector, across Member States. At the same time the analysis of cases with limited effect on trade can be simplified by reviewing the regime of exemptions, in particular the General Block Exemption Regulation adopted in 2008 and, possibly, the Regulation on small amounts of aid adopted in 2006. This can only become possible if Member States improve the quality of submissions and comply even more with EU law.

Third, procedures shall be streamlined to deliver decisions within business-relevant timelines. Also, rules and concepts shall be better explained, including a clarification of the notion of state aid and a modernisation of the Procedural Regulation.

The Commission will seek further contributions from Member States, European institutions and stakeholders on all elements of the package in the coming months. The main elements shall enter into force by the end of 2013.

COMPETITION

Commission consults on future of maritime transport antitrust guidelines

The European Commission is inviting stakeholders to submit their views on the future of the guidelines on the application of the EU antitrust rules to maritime transport services. These guidelines will expire in September 2013. The Commission's competition department takes the preliminary view that specific antitrust guidelines in the maritime transport sector are no longer needed. Comments may be submitted until 27 July 2012.

The Commission's directorate general for competition has set out its preliminary assessment on the future of these guidelines in a staff working document. Their main purpose, which was to facilitate the transition from a specific to a general competition regime for maritime transport after the repeal of an exemption for liner conferences in 2006, has now been achieved, in line with the Commission's general policy of phasing out sector specific antitrust rules. Moreover, the guidelines now overlap with general antitrust guidelines, such as the guidelines on horizontal cooperation agreements. The competition department therefore considers at this stage that specific antitrust guidelines in the maritime transport sector are no longer needed.

The Commission is seeking stakeholders' views and invites all interested parties to submit their comments on the staff working document by 27 July 2012.

The consultation is available at

http://ec.europa.eu/competition/consultations/2012_maritime_guidelines/index_en.html.

ELECTRONIC COMMUNICATIONS

Commission consults on draft Guidelines for broadband networks

The European Commission is inviting comments on the application of EU state aid rules to the public funding of broadband networks. The key issue for discussion is how to adapt the current Guidelines to the objectives of the EU Digital Agenda. In line with the Commission's state aid modernisation package, the proposed changes aim to ensure that state aid policy in the broadband sector focusses on facilitating well-designed aid targeted at market failures and objectives of common European interest, streamlining rules and taking faster decisions. Comments on the draft guidelines should be submitted by 3 September. On the basis of the comments received, the Commission intends to adopt definitive Broadband Guidelines in December 2012.

In 2011, the Commission launched the review of the 2009 broadband guidelines with a first public consultation on the basis of a questionnaire and conducted an expert report on the implementation of the current rules. Most stakeholders found that the existing rules worked well and required no significant modifications, but considered that there was scope for more clarification. The draft Guidelines therefore aim at clarifying and simplifying the existing rules, for example by easing some conditions for investments in rural areas.

On the other hand, all Commission legislation in this field is harmonised to fully support the objectives of the Europe 2020 growth strategy and one of its flagship initiatives, the Digital Agenda. As good progress has been made with regard to the objective of connecting all citizens to basic broadband networks, the focus is shifting towards facilitating the roll out of fast networks. Therefore the revised Guidelines propose to include the possibility of supporting ultra-fast broadband networks (with speeds above 100 mbps) under certain conditions.

The revised rules also aim at increasing transparency by asking Member States to publish all information on broadband schemes receiving state support on a central webpage or reducing administrative burden for smaller projects. Finally, the draft proposes to focus investments on infrastructure elements that are not directly related to the transmission of services, such as ducts or dark fibre (passive infrastructure). Investments into passive infrastructure are particularly expensive. If such investments are financed through public funds, the infrastructure will be available indiscriminately to all service providers who intend to enter the market. This, in turn, will foster competition, in particular for very high speed broadband networks and contribute to improving broadband services and reducing prices for European consumers. Moreover, it may attract new commercial investors to the sector, such as investment banks or pension funds.

The draft Guidelines are available at:

http://ec.europa.eu/competition/consultations/2012_broadband_guidelines/index_en.html

Commission clears state aid to an ultra-fast broadband network in Birmingham

The European Commission has found a proposal by the United Kingdom to grant around €6 million of public financing for the construction of an ultra-fast broadband network in the city of Birmingham to be in line with EU state aid rules, in particular because it will be genuinely open to all operators and will therefore promote competition.

"Investments in ultra-fast broadband networks contribute to promoting growth in line with the EU's Digital Agenda. If such networks are built with the help of taxpayers' money, it is important to ensure thriving competition on the subsidized networks, so that local businesses and citizens can benefit from continuously improving broadband services at competitive prices." said Commission Vice President in charge of competition policy Joaquín Almunia.

The target areas of the measure are two districts in Birmingham where private operators have no or very limited investment plans in the next three years. This means that in the absence of this project most consumers would only be able to use basic broadband services or very expensive business leased line services.

The Commission's investigation found that the ultra-fast network of Birmingham was designed in a pro-competitive manner, exceeding in several respects the requirements of the EU Broadband Guidelines. In particular, open access will be granted for at least 25 years for alternative operators, whereas the guidelines require only seven years. Moreover, the network will be operated on a wholesale basis so as to ensure more competition at retail level. Finally, all possible wholesale access products will be offered to third party operators, including dark fibre, which is one of the most pro-competitive wholesale access products.

The project is also fully in line with the requirements of the new draft Broadband Guidelines (published on 1 June for public consultation), in particular by offering significant enhanced technological characteristics as compared to existing networks (for instance symmetric speeds). There is expected demand for such qualitative improvements from numerous local SMEs active in the "creative industry". Moreover, the subsidized network will be operated as a wholesale only network.

The project is part of the UK's "ultra-fast broadband city" initiatives, under which £100 million was allocated to support the roll out of such infrastructures in large UK cities. These projects support the third objective of the EU Digital Agenda and the Europe 2020 initiative for growth, namely to achieve 50% internet penetration on 100 Mbps networks.

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