



METAXAS & ASSOCIATES

ATTORNEYS AT LAW

NEWSLETTER - *Latest legal updates*

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STATE AID

“M&A” Law Firm drafts legal opinion regarding the compatibility of potential measures for the support of national photovoltaic industry with EU State Aid Law

“Metaxas and Associates” Law Firm has drafted a legal opinion on the compatibility of potential measures for the support of national photovoltaic industry with EU State Aid Law. More specifically, the objective of the legal opinion was the assessment of the compatibility of a potential “feed in tariff premium” for the user of photovoltaic equipment produced in Greece.

The findings of the abovementioned legal analysis are that such a premium could not be considered as a priori incompatible with the European state aid legal framework. According to a critical analysis of the case-law of the Court of the European Union (CEU), the applicable European legal framework and in view of the operating structure of the feed in tariff system in Greece, it is highly doubtful that such a measure might be considered as an incompatible state aid according to Article 107 par. 1 of the Treaty on the Functioning of the European Union (TFEU). The legal opinion also refers to international examples of implementation of the so-called “local content requirement” in order to support the photovoltaic equipment production of particular origins.

Commission issues no objection decision on Broadband development in Greek rural areas

On the 10th of November 2011, the European Commission issued a decision not to raise objections on Greece’s Broadband State Plan of around 200 million €, which are intended to be dispersed upon broadband deployment in rural “white areas”, where no operator intends to deploy its network. The public version of this decision is not yet available and it will be displayed as soon as it has been cleansed of any confidential information.

ENERGY

Commission launches public consultation on governance of the day ahead market coupling

On the 28th of November 2011 the Directorate General for Energy of the European Commission officially launched a public consultation regarding the governance framework of the European wide market coupling of electricity wholesale markets, targeting the electricity market participants, the transmission system operators, the power exchanges, the consumer and industry organisations, the energy regulators and the competent Member States authorities.

Market coupling is the method chosen to integrate European wholesale electricity markets. It is the key element in the target model for capacity allocation and congestion management which has been developed in the context of the Florence forum which involves all main stakeholders including the Member States. Market coupling means that the cross-border flows at the day-ahead stage are determined by using the price signals in the day-ahead spot markets in each Member State. This enables an efficient European wide price formation mechanism and optimised use of the transmission grid through a strong interaction between price zones. Regarding the time-table for implementing market coupling, Heads of States have set a target date 2014 for a fully functioning electricity market in their meeting in February 2011.

Target groups are invited to submit their contribution and comment on the questions raised by 12th February 2012 at the latest.

The Commission's energy infrastructure package

The European Commission presented an energy infrastructure package. Energy infrastructure, such as pipelines and energy grids, constitute key factors to accomplish European climate and energy goals. More specifically,

powerful and integrated networks are essential to increase the share of renewable energy to 20% of our overall energy consumption by 2020, smart meters and smart grids are indispensable to save 20% of the estimated energy consumption in 2020 via technology, and new, modernized pipelines are needed to ensure a secure gas supply and a functioning internal market with competition. The infrastructure projects will require around 200 billion Euros in the next ten years. To this extent, investments will be needed to support the projects financially. In this context, the Commission proposes to select a number of projects of “Common Interest”. Projects of “Common Interest”, which involve at least two Member States, benefit from an easier, faster and more transparent permit granting procedure and they are eligible for EU funding, on the grounds that they display economic, social and environmental viability. It is the first time that the EU is co-financing the construction of large energy infrastructure from its regular budget. Equity instruments (e.g. investment funds) and risk-management instruments (e.g. loans, guarantees and project bonds) are included in the financial portfolio for the energy infrastructure projects. In addition, energy infrastructure package is due to respect the environmental standards, in particular the standards set by the Natura 2000 Directive. In view of the above, the European Parliament and the Council should adopt a Regulation by the end of 2012 for an entry into force at the beginning of 2013, leaving enough time for the establishment of the first Union-wide list of projects of common interest, which will enter into force in 2014.

TRANSPORT

Maritime safety: Commission sends reasoned opinion to four Member States

On the 24th of November 2011 the Commission sent reasoned opinions to Austria, Greece, Poland and the United Kingdom for failure to communicate what measures they were taking to transpose Directive 2009/18/EC on the investigation of accidents at sea. This is a normal procedure in case there is a persistent failure to communicate such measures, despite having received formal notice. The last step before possibly taking a matter to the Court of Justice is sending a reasoned opinion.

The Directive 2009/18/EC lays down the basic principles which shall govern investigations regarding accidents in the maritime transport sector. It requires the Member States to bring into force the legislative, regulatory and administrative implementing provisions deemed necessary before the 17th of June 2011.

The Directive aims to improve safety in the maritime transport sector and also better prevent pollution from ships by requiring Member States to organize safety investigations after serious accidents at sea. These investigations, being separate from any criminal investigations taking place in parallel, are carried out by independent bodies and aim to establish the cause of the accidents and draw lessons, in order to improve maritime safety in the future. Failure to take such measures means that Member States prevent such arrangements from being set up.

Commission asks Greece to act on dangerous goods

On the 24th of November 2011 the Commission requested Greece - in the form of a reasoned opinion under EU infringement procedures - to adopt national legislation on the inland transport of dangerous goods in compatibility with its European legal obligations. The Commission set a specified period of two months in order Greece to provide information of measures taken to ensure full compliance with the European legislation. In case of failure to ensure such compliance, the Commission could refer the case to the EU Court of Justice.

The Directive 2008/68/EC on the inland transport of dangerous goods establishes the regulatory framework on the safe transport of dangerous goods by road, rail and inland waterways. The rules are updated every two years to align with the latest scientific and technical progress and to maintain coherence with the relevant international regulations. The Directive 2010/61/EU adapts the technical provisions on the inland transport of dangerous goods to include the changes entering into force in 2011.

In spite of the fact that Greece was required to have fully transposed the Directive into national law by 30 June 2011, it still lacks appropriate action.

TELECOMMUNICATIONS:

Digital Agenda: Commission presses sixteen Member States to implement new EU telecoms rules

On the 24th of November 2011 the European Commission wrote to sixteen Member States which have failed to fully implement new EU telecoms rules into national law, six months after the deadline to do so (25 May 2011). According to the Commission, consumers' rights in these sixteen Member States are limited due to the partial implementation of the EU Telecoms rules. The new rules give EU customers new rights regarding fixed telephony, mobile services and Internet access. For instance, the right to switch telecoms operators in one day without changing their phone number and the right to clarity about data traffic management practices employed by Internet Service Providers.

The new EU Directives, which have to be implemented into national law, are the following: the Better Regulation Directive and the Citizens' Rights Directive, which together amended five different existing EU Directives (Framework Directive, Access Directive, Authorisation Directive, Universal Service Directive and e-Privacy Directive). Only seven countries (Denmark, Estonia, Finland, Ireland, Malta, Sweden and the UK) met the 25 May 2011

deadline for full implementation. Therefore, in July 2011, the Commission wrote to 20 Member States requesting further information on implementation. Latvia, Lithuania, Luxembourg, and the Slovak Republic have since notified full implementation to the Commission.

The Commission's requests take the form of "reasoned opinions." Member States which do not fully implement the new laws risk referral to the EU's Court of Justice and potential financial penalties. The sixteen Member States are: Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, France, Germany, Greece, Hungary, Italy, The Netherlands, Poland, Portugal, Romania, Slovenia and Spain.

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