METAXAS & ASSOCIATES
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NEWSLETTER - Latest legal updates

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STATE AID

Establishment of the Hellenic State Aid Institute

The Hellenic State Aid Institute was founded in March 2010 in Athens upon an initiative of Dr. Antonis Metaxas, Managing Partner of the Law Firm "Metaxas & Associates". Its members include almost all leading Greek State aid experts, such as founding members of the Institute, Dr. Mihalis Kekelekis, Senior Lecturer, EIPA (Maastricht) and Stamatis Drakakakis, Partner at "Tzouganatos and Partners" Law Firm.

The Institute's main objective is research and education on EU State aid policy issues, from a legal as well as from an economic point of view. Accordingly, the Institute aims at promoting the awareness and disseminating knowledge of State aid rules and their enforcement at EU and national level, while tracking any recent developments and trends in this area.

The Institute's activities target primarily public authorities, which are involved in the design of State aid measures, as well as academics, judges, private practitioners and interested scientists from diverse fields.

Towards the scope of exchanging and acquiring knowledge and experiences the Institute intends to maintain international relations primarily with similar organizations, i.e. the European State Aid Law Institute.

In particular, the Institute's principal activities are:

- Promotion of research in the area of State aid and collaboration with other domestic or foreign institutes and research centers,
- Organization of events such as seminars/webinars, conferences and debates with a view to raising the interest of the public, civil servants and members of the judiciary on issues concerning State aid,
- Supply of relevant information and advice to domestic and foreign public and private legal entities, scientific legal associations and lawyers,
- Scientific publications on State aid issues.

The Institute's governing structure is composed by the Board of Directors that manages the Institute's affairs as well as an Advisory Board and a Research Board.

The Advisory Board consists of renowned academic experts with scientific and professional reputation and experience in the area of State Aid while the Research Board aims at materializing the Institute's scientific and research activities. The Members of the Research Board are appointed by the Board of Directors.

Many renowned state aid experts and academics have already joined the Institute as Members of its Advisory Board, such as Dr. Thomas Jaeger, Managing Editor of European State Aid Law Quarterly (EStAL), Professor P. Nicolaides, European Institute for Public Administration (Maastricht), Christos Andreou, State Aid Commissioner in Cyprus, Professor Yannis Katsoulacos, Vice Rector, Athens University of Economics and Business, Professor Mihalis Tsinisizelis, University of Athens, Professor Kostas Ifantis, University of Athens, Professor Panayiotis Grigoriou, University of the Aegean School of Social Sciences, Ass. Professor Nikos Farantouris, University of Piraeus.

More information about the Institute may be found on the its website www.stateaid.gr

The official presentation of the Hellenic State Aid Institute is scheduled to take place in October 2010 with a conference on "State aid, Support of Innovative Business Initiatives & Development", which will be held at King George Palace Hotel and will be co-organized with the Hellenic-German Chamber of Commerce in Athens and the Embassy of the Federal Republic of Germany in Greece.

Commission decision to maintain regional aid ceilings

On 20 July 2010, the European Commission announced its decision, under EU state aid rules, to allow the regions of Hainaut in Belgium, Dytiki Makedonia and Kentriki Makedonia in northern Greece, and Basilicata in southern Italy to continue to award regional aid at a basic intensity of 30% from January 1st and on. Furthermore, a reduction will be effected, starting from that date, from 30% to 20% on the regional aid ceiling applicable in the 12 other regions located in Germany, Greece, Spain, Austria, Portugal and the UK, countries that were allowed to maintain higher regional aid ceilings because their GDP per capita had been increased artificially after the accession of ten member states on 1st May 2004. This decision is based on a review of statistic data on GDP (Gross Domestic Product) provided by Eurostat.

The Treaty on the Functioning of the European Union (TFEU) distinguishes between two types of assisted areas in the context of regional aid. Article 107.3 a TFEU identifies certain regions as eligible for regional aid because they have a GDP per capita below 75% of the EU average. According to the European Commission Guidelines on national regional aid for 2007-2013 (OJ 2006 C 54/08), these regions may grant aid ranging generally between 30% and 50% of eligible investment costs. Regions eligible on the basis of Article 107.3c of the Treaty are identified on the basis of various criteria, and have an aid intensity ceiling ranging from 10% to 20%.

In these Guidelines the 'statistical effect regions' are identified as regions whose GDP per capita was below 75% of the EU-15, but which, due to the enlargement of the EU to 10 new Member States in 2004, have witnessed a purely statistical increase in their GDP per capita, over the threshold of 75% of the EU-25 average. These regions were eligible for regional aid under Article 107.3a TFEU until 31 December 2010, with an aid intensity of 30% for large enterprises and respectively 50% or 40% for small and medium-sized enterprises. After that date, they were to become eligible under Article 107.3 c TFEU with an aid ceiling of 20% for the period 2011-2013, unless a GDP review to be carried out by the Commission in 2010 showed that their economic situation had degraded to such an extent that their GDP per capita had again fallen below 75% of the EU-25 average.

According to Eurostat data, Hainaut, Basilicata and Kentriki and Dytiki Makedonia are the four regions within which States have a GDP per capita (in purchasing power standards calculated as a three year average) below the threshold of 75% of the EU-25 average and will maintain their regional aid ceiling of 30% until the end of 2013.

Commission authorizes recapitalization scheme for Greek credit institutions

The European Commission has authorized a scheme for the recapitalization of credit institutions in Greece by the Hellenic Financial Stability Fund (FSF). The scheme is compatible with EU rules that allow aid to remedy a serious disturbance in the economy of a Member State. The Fund's capital is 10 billion Euros and is part of the euro-area/IMF financial assistance to the country.

The creation of the Financial Stability Fund, that is set to last until 30 June 2017, is provided for in the May 3rd Memorandum of Understanding (MoU) on Specific Economic Policy Conditionality between the Greek Government, the European Union, the European Central Bank and the International Monetary Fund. Although the MoU and the FSF were agreed at the highest level in the euro area, the Commission must check that the conditions under which the banks in need will be recapitalized are compatible with the rules on the recapitalisation of financial institutions during the crisis. According to the Commission, the measure is compatible with Article 107.3 (b) of the Treaty on the Functioning of the EU (TFEU), which allows state aid to remedy a serious disturbance in the economy, as well as with the Commission's Recapitalisation Communication.

Particularly, on 21 July 2010, Greece requested the Commission's approval of the recapitalisation scheme under the FSF until 31 December 2010. This time limit is due to the fact that the crisis-related state aid schemes are approved for six-month periods, whether they concern recapitalisation, loan guarantees or treatment of impaired assets, to be able to re-assess the situation according to the evolution of the financial markets. In any case, the limitation is without prejudice to the existence of the fund, which is established under Greek law until 2017. The Fund aims to safeguard the stability of the Greek banking system when capital is not available through normal, generally private, solutions. It will provide equity capital to credit institutions by acquiring preference shares and, under certain conditions, common shares in respective banks. In case of preference shares, the scheme requires a remuneration of 10% of the shares and insists on several behavioural restrictions such as a dividend and a coupon ban. Moreover, in principle all banks benefitting from the fund will need to present a restructuring plan to the Commission.

MERGERS

Commission opens an in-depth investigation into the proposed merger between Olympic Air and Aegean Airlines

The European Commission has decided, under the Article 6.1c of the EU Merger Regulation, to open an in-depth Phase II investigation into the planned merger between the Greek airlines Olympic Air and Aegean Airlines. According to the Commission, the merger could raise serious competition concerns on the basis that the merged entity would have very high, if not monopolistic, market shares on all domestic routes and on a number of international routes.

The Commission is also concerned about the compatibility of the transaction with the Merger Regulation in connection with the provision of Public Service Obligation routes in Greece and the provision of ground handling services in Greece. The Commission will take a final decision until 7 December 2010 on whether the merger would significantly impede effective competition in the European Economic Area (EEA) or any substantial part of it.

On 24 June 2010 the Commission received a notification of a proposed concentration whereby Vassilakis Group of companies, Marfin Investment Group and Laskaridis Group of companies would acquire joint control over a newly merged company, including the businesses of the following, previously independent, Greek companies: Aegean Airlines S.A., Olympic Air S.A., Olympic Handling S.A. and Olympic Engineering S.A. The

Commission's initial investigation found that the proposed transaction would lead to very high market shares and even monopolies on many domestic routes as well as on a number of international routes.

Furthermore, regarding the Public Service Obligation routes, the transaction would bring together the two strongest and most credible bidders as compared to smaller rivals in tenders for routes operated in monopoly in exchange for a subsidy. As to ground handling, the transaction leads at least to a vertical relationship between the parties at a number of Greek airports.

Commission approves the creation of a Balkan supermarket joint venture by Carrefour and Marinopoulos

On 4 August 2010, the European Commission announced its decision, under Article 6.1b of the EU Merger Regulation, to approve the creation of a Balkan supermarket joint venture by Carrefour of France and Marinopoulos, which is mainly active in the supermarket sector in Greece and Cyprus. The Balkan consortium will take over the operation of four supermarkets already functioning in Bulgaria and proceed to create new stores under the Carrefour banner in Bulgaria, Slovenia and other Balkan countries. The transaction was examined under the simplified merger review procedure. Carrefour and Marinopoulos have operated together under a 50-50 joint venture in Greece since 1999, running more than 300 stores across the country.

PUBLIC PROCUREMENT

Commission takes action against Greece for not complying with Court ruling

On 24 June 2010, the European Commission announced that it has asked Greece to comply with a 2009 judgment of the Court of Justice (C 489/06), which had found that Greece was in breach of the public procurement rules by rejecting offers from suppliers of medical equipment bearing the CE marking. According to the Commission, Greece has failed to comply with the judgment, as several Greek public hospitals still continue to reject such offers. In the case of non-compliance the Commission may refer the case to the Court for the second time and ask it to impose a lump sum or penalty payment.

The Commission has also decided to refer Greece to the Court of Justice regarding the direct award of a public services' contract for the management of medical waste in Attica without following the necessary public tender procedure according to EU public procurement rules.

For further information you can contact:

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