



# METAXAS & ASSOCIATES

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## **NEWSLETTER** - *Latest legal updates*

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## ENERGY

### **Conference: The role of Renewable Energy Sources in a new development model**

On the 29th of September 2012, Friedrich Ebert Stiftung, the Hellenic State Aid Institute and "Metaxas & Associates Law Firm", co-organized an event, followed by a round-table discussion, regarding the role of Renewable Energy Sources in a new development model. This event was held within the framework of "Capital & Vision" Conference that took place in Athens Hilton Hotel. The German Deputy Minister of Labour, Hans- Joachim Fuchtel, who participated therein, referred to the axes of the Greek-German co-operation, which could enhance the development process, whereas the Greek Government was represented by the Deputy Minister for Development, Transportation, Infrastructure and Networks, Mr. Notis Mitarakis, who referred to the challenges the Greek development policy faces; challenges that should be resolved in order for the current financial crisis to be outreached. .Representatives of almost all leading RES associations (HELAPCO, PANHELLENIC PHOTOVOLTAIC ASSOCIATION, PHOTOVOLTAIC ENERGY PRODUCERS ASSOCIATION, HELLENIC WIND ENERGY ASSOCIATION, GREEK RES ELECTRICITY PRODUCERS ASSOCIATION, ESMIE), as well as the Member of the BoD of Eurosolar Mr. Axel Berg and the Vice President of the Regulatory Authority for Energy, Mr. Rachiotis, participated in the open discussion that took place, where all the participants exchanged opinions.

### **European Parliament votes on the decision on the intergovernmental agreements mechanism**

On 13.09.2012 the European Parliament adopted the Kariņš report on the Decision setting up an information exchange mechanism for intergovernmental agreements between Member States and third countries in the field of energy. This piece of legislation will extend the obligatory notification of existing intergovernmental agreements in the gas sector to other energy sources. This allows for a more

complete picture of agreements and for the analysis of potential incompatibilities they may include. The Decision also confirms the possibility for the Commission to participate upon request of a Member State in negotiations as observer and to provide advice to Member States. It also provides the possibility for the Commission to perform upon request from a Member State ex-ante compatibility checks of negotiated agreements. These elements are likely to increase compliance and consistency with internal market rules, legal certainty for investors and solidarity among Member States.

## STATE AID

### **Commission finds OPAP's exclusive rights and exclusive VLT license contain no state aid after amendments**

The European Commission has authorized Greece, under EU state aid rules, to prolong until 2030 exclusive rights granted to OPAP, the Greek public gambling operator, to operate 13 games of chance, and to grant an exclusive license to the same operator to operate 35,000 Video Lottery Terminals (VLT) until 2022. The Commission concluded that OPAP will pay an adequate fee in exchange of the exclusive rights and VLT license and therefore received no undue economic advantage.

Under the arrangements notified by Greece to the Commission, OPAP will benefit from the prolongation of its exclusive right to operate 13 games of chance by 10 years ending in 2030, and the grant of an exclusive VLT license to operate 35,000 Video Lottery Terminals for 10 years until 2022.

Following the notification of the arrangements, Greece cooperated actively with the Commission to determine the market values of the exclusive rights and the VLT license. On the basis of a common valuation, the Greek authorities increased the consideration to be paid by OPAP for the VLT agreement by an additional levy of up to 5% on the VLT's gross gaming revenues, depending on the level of these revenues.

In light of this amendment, the Commission found that the prolongation of the exclusive rights and the VLT license contained no state aid because overall OPAP will pay an adequate market fee for both arrangements.

### **Commission invites comments on rules for state aid for environmental protection**

Commission opens a public consultation from 31.07.2012 to 23.10.2012 on the Guidelines on state aid for environmental protection (2008). This action stays in line with its state aid modernization initiative (adopted in May 2012) and the already under revision specific environmental provisions of the General Block Exemption regulation. Member States grant funding to companies whose economic activities demand prior notification of the aid to the Commission and approval before the implementation. The main objective of state aid control in the environmental sector is to ensure that public funding results in a higher level of environmental protection, while taking account of the market, regulatory and technological developments that have taken place since the last review. Furthermore, it should be noted that the “polluter pays” principle established by Article 191 of the Treaty on the Functioning of the European Union (TFEU) actually results in positive rather than negative effects in terms of distortions of competition.

### **Commission concludes that the provisions of the Piraeus Port concession agreement contains no State aid**

The Commission applying the procedure of the Article 108 (2) TFEU has reached a decision referring to the alleged State aid measures that the Greek State has supposedly granted to the Piraeus Container Terminal S.A. ("PCT"), a special purpose subsidiary of COSCO Pacific Limited ("COSCO"). The measures refer to the following sets:

- i. advantageous provisions included in the concession agreement although not foreseen in the tender;
- ii. tax exemptions and other advantages, including the special protective regime for foreign investments and exemption from forced expropriation.

Concerning the differentiated provisions of the concession agreement under assessment (such as: possibility to extend the duration of the concession in case of force majeure, extension of the deadline for the submission of the analytical statement of variable consideration discharge, from one month at the end of each annual accounting period to three months, the inspection of the installations at the end of the concession, 12 instead of 24 months before the expiry of the concession agreement, termination of the concession agreement by PPA if PCT abandons the operation and exploitation of the container terminal for a continuous period of 15 instead of 5 days), the Commission considers that they have not changed the scope and characteristics of the concession agreement compared to what was published in the Official Journal notices, nor do they influence the economic terms of the concession as it was initially planned, in a way that would grant to PCT any additional economic advantage which would constitute State aid.

Concerning the tax exemptions and other advantages the Commission has concluded that the fiscal measure related to the exemption from corporate income tax for goods, works and services provided to PCT outside Greece does not constitute state aid. However, the Commission requests Greece to submit comments within a month concerning the measures: (a) refund of VAT credit irrespective of the stage of completion of the contract object, (b) the computation of interests from the 1st day after the expiry of the 60 day deadline, (c) Loss carry forward without temporal limitation, (d) exemption from stamp duties on the loan agreements and any ancillary agreement for the financing of the investment project.

## **The CEU decides to suspend the recovery of 425 million Euros from Greek farmers**

The Court ruled the suspension of the decision of the European Commission ordering a recovery of 425 million euros from Greek farmers. "In this case, the Greek Republic, had to recover the amount of 425 million euros from the total of approximately 800 000 farmers in the country, who, along with their families, represent one third of the total population of Greece. In addition to that, such action may cause multiple reactions in the agricultural population, which has been affected by the crisis and by the harsh austerity measures, even when strikes in the public and private sectors are now a daily occurrence while acute social tensions and clashes between protestors and the police are a constantly growing phenomenon". Furthermore, "since the financial impact of the disputed payment on competition and on trade between Member States is, prima facie, considerably less than what would be the amount of 425 million euros taken into account by the Commission, it cannot be excluded that these payments are being used exclusively to compensate the Greek farmers who had suffered losses of income due to reduced production of certain crops, bad weather and not because they are willing to artificially increase production and exports".

## **COMPETITION**

### **Commission publishes guidance on application of competition rules in car sector**

The European Commission has published a set of frequently asked questions (FAQs) on the application of EU antitrust rules in the motor vehicle sector. The FAQs provide stakeholders with guidance on how the Commission applies these rules, in particular in the markets for repair and maintenance services and spare parts.

In May 2010, the Commission adopted a new Motor Vehicle Block Exemption Regulation and accompanying Guidelines, concerning the application of EU antitrust rules to categories of agreements between vehicle manufacturers and

their authorized dealers, repairers and spare parts distributors (see IP/10/619 and MEMO/10/217). Following requests from stakeholders and national competition authorities for further practical guidance on the application of the new rules, the Commission has now published a set of frequently asked questions.

The FAQs are based on input and queries received during the initial period of application of the new rules. They explain how the Commission approaches particular issues regarding six topics, namely (1) the honoring of warranties; (2) servicing in the context of leasing contracts; (3) the supply of spare parts; (4) the use and purchase of electronic diagnostic and repair tools; (5) access to technical information; and (6) access to authorized repairer networks. Particular attention is devoted, thus, to the motor vehicle aftermarkets, which tend to be less competitive than the markets for the sale of new cars.

## TELECOMS

### **Commission approves public funding for high speed fibre broadband network in Sardinia, exploiting synergies from concomitant works for gas network**

The European Commission has found an Italian project to finance a high speed broadband network in Sardinia to be in line with EU state aid rules. The cost for the project, known as BULGAS/FIBRESAR, will be reduced through cost-saving opportunities offered by concomitant civil works for the rollout of a gas distribution network in the same region. The Italian authorities intend to lay a next generation fibre-to-the-home (FTTH) network for the public administration alongside the gas distribution network and to make it available to commercial operators to offer advanced connectivity services to citizens and business in Sardinia. The Commission's investigation found in particular that the project covers areas that are not profitable for commercial investors, grants effective and non-discriminatory wholesale access to the network, reuses existing infrastructures, does not favour any given technology and ensures a structural separation between the network wholesale manager and the retail operators, in

line with the EU broadband guidelines (see IP/09/1332 and MEMO/09/396). The measure is an example of good practice for the rollout of such next generation networks, where the most discouraging element for commercial investors is represented by the high costs for civil works.

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