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- *M & A Law Firm sponsored the important Workshop of the Hellenic Wind Energy Association on 10 May 2018: « RES investments – and in particular wind energy investments – in view of the new tender procedures and the new support mechanism for RES»*
- *M&A Law Firm advises leading RES producer in the legal due diligence and contractual takeover of a solar park portfolio in a 9.5 million euros project*

*The Hellenic Energy Regulation Institute organizes the **"Athens Conference on European Energy Law"** in cooperation with the Florence School of Regulation (On December 7th 2018 in Athens)*

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Issue 7
April - May 2018

Energy

The application of the General Data Protection Regulation: The legal implications and practical consequences for energy companies

May 25th 2018 was marked as the first day of enforcement for Europe's Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, otherwise known as GDPR, a set of rules on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, that could fundamentally flip the relationship between massive tech companies that gather data, and the users they gather it from.

In general terms, GDPR is a new set of rules designed to give EU citizens more control over their personal data. It aims to simplify the regulatory environment for business so both citizens and businesses in the European Union can fully benefit from the digital economy. More precisely, every organization operating within the EU as well any organizations outside the EU which offer goods or services have to ensure that personal data is gathered legally and under strict conditions.

On the national level both private and public Companies operating in Greece and in any way managing personal data of employees, associates, customers or other natural persons are urged to immediately follow compliance procedures with the GDPR which imposes strict rules on processing of personal data of EU residents as well as high fines if any violations are detected.

Concerning fines and enforcements, there will be a substantial increase of organizations that do not comply with the new regulation. More precisely, violations of obligations related to legal justification for processing, data subject rights, as well violations of record- keeping, security and breach notification will conduct to penalties equals to the greater of €20 million or 4% of the entity's global gross revenue.

Facing the new challenges, companies should implement new strategic plans without jeopardize their integrity. Particularly each company has to conduct full review of processing activities for personal data. Knowing which data is concerned, where it is stored, who uses it and who can access it will enable a proper assessment of how the GDPR will affect the company.

In general lines, the compliance procedure of an enterprise is the following.

a) Data flow mapping and recording:

A legal counsel should undertake the compliance with respect to registering how and for what purpose the personal data were obtained from the business, in what categories (simple, sensitive, public) these are included, which are the personal data carriers that are kept, who has access to and who will be notified / forwarded, whether the subject has consented to the processing, how long personal data is retained, and generally, what technical and organizational measures have been taken for data protection.

b) Control of information and legal systems

This stage involves the investigation of the legal basis of data protection, the legal framework and, in particular, the legal review of the employment contracts concluded by the firm with its personnel, contracts with customers and suppliers. At the same time, at this stage, the security of the information systems that are being maintained is controlled. Upon completion of the audit, a report of deficiencies in relation to the GDPR Regulation will be drawn by the compliance officer and if the assessment results in a high risk, the Data Protection Officer should seek the opinion of the Data Protection Authority.

c) Designing and implementing a compliance process

The company should then take the necessary technical, legal and organizational measures for data security and compliance with the GDPR requirements, including reviewing existing contracts of employment, contracts with customers and suppliers of the business with adding special contractual clauses and designing new security policies.

d) Staff Training

At this stage, the training of the enterprise staff and staff members takes place in order to exclude possible violations.

e) Defining Data Protection Officer (DPO)

The Data Protection Officer is selected by the Enterprise on the basis of his/her professional qualifications and experience in the area of personal data law and his/her capacity to perform the tasks referred to in Article 39 of the GDPR Regulation. In particular, the Data Protection Officer shall have as a minimum the following tasks (Article 39): (a) informing and advising the Controller or Processor who process their obligations under this Regulation and other provisions of Data protection; (b) monitor compliance with this Regulation in accordance with national data protection provisions and the data protection policies of the Union or the Member State (c) advising, when requested, about the data protection impact assessment and monitors its implementation in accordance with Article 35; (d) cooperating with the supervisory authority; (e) acting as a point of contact for the authority for processing-related issues, including the prior consultation referred to in Article 36, and consults, as appropriate, on any other matter.

To conclude, the GDPR's effectiveness will be assessed following its implementation in May 25. In theory, the result will be a more equitable digital advertising space for all players. If marketers and consumers mutually benefit from the improved transparency and trust as is expected, other jurisdictions outside the EU may well follow suit, which could spell even bigger changes for the digital ecosystem in the years to come.

The upcoming RES Auction scheduled for July 2nd for wind energy projects between three and 50 MW; large-scale solar energy projects between one and 20 MW; and small-scale solar energy projects less than one MW

Prospective participants of a RES auction scheduled for July 2 to offer investors installation capacities for mature projects in three categories – wind energy projects between three and 50 MW; large-scale solar energy projects between one and 20 MW; and small-scale solar energy projects less than one MW – have submitted a satisfactory level of applications.

The deadline for applications expired on the 5th of June. Applications for wind-energy capacities were highest, totaling approximately 380 MW, sources noted.

Applications for the two solar energy categories reached a combined total of approximately 240 MW, of which roughly 195 MW concerns large-scale photovoltaic projects between one and 20 MW.

Judging by these figures, capacities of between 215 and 220 MW concerning wind energy projects and 135 to 140 MW concerning photovoltaic projects will be offered at the upcoming July 2 auction.

Taking into account a decision by RAE, the Regulatory Authority for Energy, to offer a total of 600 MW in 2018, approximately 250 MW will be left over following next month's RES auction. According to sources, this amount will be offered at an additional auction within 2018. It is not linked to a combined wind-solar capacities auction also scheduled for the current year.

Official application data for the July 2 auction is scheduled to be released on the 19th of June when RAE will make known the final cut and precise capacities to be offered following an examination of applications.

The European Investment Bank and the European Bank of Reconstruction and Development will most likely be lending to developers of the projects. Last year, the EBRD committed to lend 300 million euros to finance clean energy in the Mediterranean country.

Commission approves the Greek measures to ensure fair access to lignite-fired electricity generation for PPC's competitors

The European Commission has made legally binding under the EU antitrust rules the measures submitted by Greece to ensure fair access to lignite-fired power generation for the competitors of Public Power Corporation (PPC), the incumbent electricity operator. Furthermore, it concluded that the measures are also in line with the EU's climate and energy objectives.

In its decision of March 2008, the Commission found that Greece had infringed competition rules by giving the state-owned electricity incumbent, PPC, privileged access rights to lignite, and called on Greece to propose measures to correct the anti-competitive effects of that infringement. Due to appeals at both the General Court and European Court of Justice, such corrective measures have not been implemented so far.

On 17 April, the Commission has concluded that the amended final version of the remedies submitted by Greece on 19 January 2018 fully addresses the infringement identified by the Commission in its 2008 Decision, while also taking into account Greece's environmental objectives and current market circumstances.

The remedies aim at removing the privileges created by the special access rights granted to PPC. In particular, they provide that PPC will divest the lignite-fired units of Meliti (including the licensed unit of Meliti 2) and Megalopoli 3 and 4. The divestiture will include also the necessary employees and lignite mines.

The market test carried out by the Commission indicated that the proposed remedies are a satisfactory way of addressing the Commission's concerns. The assets to be divested will allow the purchasers to compete immediately and more effectively in the Greek wholesale electricity market.

In order to increase competition in the Greek market, PPC's competitors need to have access to base-load capacity, which in Greece is still significantly dependent on lignite, in particular during off-peak periods. More access to lignite-fired electricity generation capacity will help to increase the competitive pressure in the Greek wholesale market and to address the enduring distortions in favour of PPC.

At the same time, by divesting existing lignite-generation capacity and avoiding the further opening and exploitation of new lignite mines, the remedies also take into account Greece's environmental policy and the EU's 2020 objectives to reduce CO_2 emissions.

The tender procedure for the divestment of the above mentioned plants is expected to last until July 2018.

Some background information:

In its Decision of 5 March 2008, the Commission found that Greece breached EU competition rules (Articles 106 and 102 of the Treaty on the Functioning of the European Union, "TFEU") because it granted and maintained privileged rights to PPC for the exploitation of lignite in Greece. This resulted in an inequality of opportunity between economic operators as regards access to primary fuels (i.e. lignite) for the production of electricity and enabled PPC to maintain or reinforce its

dominant position on the Greek wholesale electricity market by excluding or hindering market entry by competitors.

The 2008 Decision provided that Greece had to identify concrete measures to correct the anticompetitive effects of the infringement. Subsequently, Greece submitted a number of measures it intended to adopt to ensure access by competitors of PPC to lignite and lignite-fired generation in the Greek electricity market. Those measures were made binding by a Commission Decision of 4 August 2009 but have never been implemented.

The 2008 and 2009 Commission Decisions were appealed by PPC. In September 2012, the General Court overturned these decisions, putting on hold the implementation of remedy measures by Greece. The Commission then appealed against the General Court's judgment. In July 2014, the Court of Justice set aside the General Court's judgments and referred the cases back to the General Court for a number of non-decided pleas. Finally, in December 2016, the General Court confirmed both decisions (*see DEI v Commission T-169/08 RENV and DEI v Commission T-421/09 RENV*), making the Commission's decisions final and binding.

The basis for the aforementioned decision was already set out in the 2008 Decision. It envisaged the possibility to revise the remedies imposed on Greece in case Greece changed its lignite exploitation policy with a view to taking into account EU environmental policies regarding CO2 emissions. With this decision, the Commission has concluded that the revised measures submitted by Greece on 19 January 2018 are apt at solving the competitive concerns under current market circumstances and environmental targets.

The divestment of a portion of PPC's lignite-fired generation capacity has also been included in the Supplemental Memorandum of Understanding agreed and signed by Greece and the Commission acting on behalf of the European Stability Mechanism (ESM) as part of a more general effort to introduce structural reforms and increase competition in a variety of strategic sectors in Greece, including electricity.

State Aid

Germany needs to recover illegal aid from certain large electricity users exempted from network charges in Germany in 2012-2013

The European Commission has recently concluded that the exemption for certain large electricity users in Germany from network charges in 2012-2013 was against EU State aid rules. There were no grounds to fully relieve those users from paying network charges. As a result, Germany has to recover the illegal aid.

More specifically, network charges are part of the usual electricity costs that any electricity user connected to the grid has to pay. These charges serve to remunerate the network operator for the network services they provide and to maintain the network in good shape. Large electricity users that have a stable electricity consumption can generate fewer network costs, notably due to the predictability of their demand.

As reported, between 2011 and 2013, electricity users that had an annual consumption above 10 gigawatt hours and a particularly stable electricity consumption were fully exempted from paying network charges under German law (§19(2) of the German Network Charges Ordinance). In 2012, thanks to this provision, these users avoided paying an estimated €300 million in network charges. These costs were instead financed by a special levy imposed on final electricity consumers (the so-called §19-surcharge), which Germany introduced in 2012.

Following the receipt of a number of complaints from consumer associations, energy companies and citizens, the Commission in March 2013 opened an in-depth investigation to determine whether this exemption amounts to State aid and if it can be justified under EU State aid rules.

Under this investigation, the Commission's investigation found that the revenues from the §19-surcharge are State resources because electricity consumers were obliged to pay the surcharge under German law and the German State has control over the funds.

This means that the full exemption granted in 2012 and 2013 constituted State aid to the exempted electricity users, because the costs were financed by the §19-surcharge, i.e. from State resources.

The exemption for 2011, on the other hand, did not qualify as State aid because the costs were borne by the network operators themselves, meaning the exemption was not financed from State resources. There is no objective justification under EU State aid rules for a full exemption from network charges for electricity users, even if they have a stable electricity consumption. Each user should pay for the costs it causes to the network. Large and stable electricity users also generate network costs and make use of network services and it is for them to bear these costs.
At the same time, Germany demonstrated that large and stable electricity users generated fewer costs than other users in 2012 and 2013, thanks to their stable and predictable consumption. This justifies a partial reduction of the network charges for these two years for those users, due to the then prevailing market conditions.
It is now for Germany to determine the amount of network charges generated by each beneficiary of the exemption in 2012 and 2013, in line with the methodology set out under the Commission decision and thereafter recover the illegal aid from each beneficiary.

Some background information:
In 2014, Germany abolished the exemption (§19(2) of the German Network Charges Ordinance). Since then, users with a stable consumption can request their network charges to be calculated on the basis of the costs that they individually cause to the network. This new regime was not part of the Commission's investigation.

Commission approves reductions on offshore surcharge for electro-intensive and railway companies in Germany

The European Commission has found that German plans to grant reductions on an offshore surcharge to electro-intensive users and railways are in line with EU State aid rules. The measure will contribute to the competitiveness of these companies without unduly distorting competition in the Single Market.

Following an amendment to the German Energy Act (EnWG), as of 2019 the costs of connecting offshore wind installations to the main electricity grid will be financed via an offshore surcharge (Offshore-Netzumlage), to be paid by electricity consumers.

The amended German Energy Act also provides for reductions from this offshore surcharge for certain electro-intensive industrial users, as well as for railway companies. The reductions will confer an advantage to these companies, as it will lower their financial burden compared to other companies that will not benefit from them.

The aforementioned reductions in offshore surcharges were notified to the Commission for review under State aid rules. In particular, the Commission has assessed the measure under both its Guidelines on State aid for environmental protection and energy 2014-2020 and its Guidelines on State aid for railways undertaking and found that:

- the reductions are limited to companies that are active in sectors exposed to international trade,
- as regards electro-intensive users, the reductions are proportionate. They provide a sustainable financing basis for supporting offshore wind installations, without putting at risk the competitiveness of companies exposed to international trade.
- as regards railway companies, the reductions help to limit the rail sector's electricity costs, improving the competitiveness of rail transport compared to other more polluting forms of transport.

On this basis, the Commission concluded that the German plans to grant reductions on offshore surcharges to electro-intensive users and railways are in line with EU State aid rules, because they will contribute to the competitiveness of these companies without unduly distorting competition in the Single Market.

Some background information:

Germany aims to increase the installed capacity of offshore wind installations to 6,500 megawatts by 2020 and 15,000 megawatts by 2030. To this end, the German Energy Act provides for the legal framework for the planning, building and operating of the power lines connecting offshore wind installations to the main grid. The connecting costs, which are currently financed via the general network charges, will be transferred into a surcharge system in order to align the mechanisms of financing the support for electricity produced from renewable energies and cogeneration under the Renewable Energy Act (EEG) and the CHP-Act (KWKG).

Accordingly, the reductions of the offshore surcharge are identical to the reductions granted for certain users under the EEG and the CHP-Act and previously approved by the Commission (SA.38632, SA.42393, SA.43666 and SA.38728).

Competition Law

European Commission: Strengthening the competitiveness of the European retail sector

On 19 April 2018, the Commission published a set of best practices to support Member States' efforts to create a more open, integrated and competitive retail sector.

The retail sector is one of the biggest sectors in the EU economy, with almost one in ten people working in over 3.6 million retail companies. The sector is changing rapidly with the development of e-commerce and multi-channel retailing, and has the potential to perform better. This is why the Commission is helping Member States and operators to overcome the current challenges by addressing an accumulation of restrictions in the retail sector.

According to the Commission, the main areas where Member States can make further progress are:

a) **Facilitating retail establishment**: The rapid setting up of a new shop is crucial for retailers to access the market, thereby fostering productivity and innovation. By improving compliance with the Services Directive, Member States can make establishment easier without putting at risk public policy interests, such as town and country planning, protection of the environment and consumers. National, regional and local authorities are encouraged to reduce undue or disproportionate burdens, making retail establishment procedures simpler, shorter and more transparent.

b) **Reducing restrictions to daily operations of shops**: These may become a significant burden for businesses and affect their productivity, which is why the Commission has identified best practices on sales promotions and discounts, specific sales channels, shop opening hours, retail specific taxes, purchasing of products in other Member States and contractual practices of

modern retail. The aim is to ensure a level playing field in retail as well as fair and efficient supply chains, while not restricting the freedom to pursue justified public policy objectives.

c) **Adopting new approaches to promote vitality of city centres**: The Commission has also published today a guide on fostering the revitalisation and modernisation of the small retail sector. The guide gives public authorities practical suggestions on how to help small retailers embrace technological change and meet the challenges of the future. Each solution is underpinned by practical real-life examples, gathered from best practices across the EU, which can be transferred to the local setting. The guide identifies success stories from which Member States can draw inspiration for example, on how to build retail communities to help bring consumers to city-centres.

What is more, the Retail Restrictiveness Indicator (RRI) provides a useful snapshot of the state of play of retail in Member States. It helps to identify best practices as well as areas for possible reforms. The RRI is also a dynamic monitoring tool to measure Member States' efforts in reducing retail restrictions and the impact of such reforms on market performance including productivity, prices and innovation, as well as spill-over effects on other sectors.

In addition to guidance for Member States' reforms and priority-setting for enforcement policy in the retail sector, the Commission will continue to monitor the evolution of the relevant regulatory frameworks and economic trends.

EU Budget: Commission proposes increased funding to invest in connecting Europeans with high-performance infrastructure

As part of the next long-term EU budget 2021-2027, the European Commission proposes to renew the 'Connecting Europe Facility', with €42.3 billion to support investments in the European infrastructure networks for transport (€30.6 billion), energy (€8.7 billion) and digital (€3 billion).

This represents a 47% increase compared to 2014-2020, showing the EU's commitment to a well-connected and integrated Union where citizens and businesses can fully benefit from free movement and the single market. For 2021-2027, the Commission is proposing to strengthen the environmental dimension of the Connecting Europe Facility, with a target of 60% of its budget contributing to

climate objectives. This will help reinforce the Energy-Union, fulfil the EU's commitments under the Paris Agreement and consolidate Europe's global leadership in the fight against climate change.
The Commission's proposal aims to better integrate the transport, energy and digital sectors, in order to accelerate the decarbonisation and digitalisation of the EU's economy. Clean mobility solutions – such as electric mobility – for instance require a close integration between the transport and energy sectors. Other examples include autonomous mobility, energy storage and smart grids.

1. Transport: safe, clean and connected mobility

The Connecting Europe Facility will support smart, sustainable, inclusive, safe and secure mobility, in line with the 'Europe on the Move' proposals and the EU's transport infrastructure policy. It will for instance help with the decarbonisation of transport by prioritising environmentally friendly modes (such as rail transport) and the development of charging points for alternative fuels. A stronger emphasis on the modernisation of the network is also proposed, notably to make it safer and more secure. As a concrete expression of European solidarity, part of the budget (€11.3 billion) will be reserved for Member States eligible to the cohesion fund.
For the first time ever, the Connecting Europe Facility will also support civilian-military dual use transport infrastructure with €6.5 billion. The objective is to adapt Europe's transport network to military requirements and to improve military mobility in the EU. This will make an important contribution to a fully-fledged Defence Union by 2025, which is a political priority of this Commission. The proposal delivers on the Joint Communication from November 2017 and Action Plan from March 2018.

2. Energy: affordable, secure and sustainable

In the energy sector, the new Connecting Europe Facility will enable the creation of a genuine Energy Union and support the energy transition in line with the objectives of the Clean Energy for all Europeans proposals. This will enable Europe to remain frontrunner in the clean energy transition in line with this Juncker Commission political priority to become the world leader in renewable energy.

To this end, a new strand of the budget will nurture Member State cooperation on cross-border renewable generation projects, in order to promote the strategic uptake of market-ready renewable energy technologies. The programme will also continue to back the key trans-European network infrastructures, allowing for further integration of the internal energy market, boosting

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interoperability of networks across borders and sectors, and facilitating decarbonisation and guaranteeing security of energy supply.

3. Digital: high-capacity broadband network

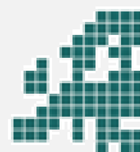
The Connecting Europe Facility will support state-of-the-art digital infrastructure, which lays the foundation for a functioning Digital Single Market. The digitalisation of European industry and the modernisation of sectors like transport, energy, healthcare and public administration depend on universal access to reliable, affordable, quality, high and very high capacity networks. With an ever-increasing demand for high-capacity networks and infrastructure in electronic communications, the new Connecting Europe Facility will devote more importance to digital connectivity infrastructure.

Next Steps

A swift agreement on the overall long-term EU budget and its sectoral proposals is essential to ensure that EU funds start delivering results on the ground as soon as possible. Ongoing large-scale infrastructure projects would otherwise be strongly impacted by delays. In the transport sector this would affect flagship projects such as the rail links Rail Baltica, Brenner Tunnel, Lyon-Turin, Evora-Merida, etc. Rail Baltica must for instance be able to launch the major procurements it needs for construction in 2021. This is crucial for the completion of a project that will help connect five million people in the Baltic.

An agreement on the next long-term budget in 2019 would provide for a seamless transition between the current long-term budget (2014-2020) and the new one and would ensure predictability and continuity of funding to the benefit of all.

For further information you may contact:



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