



METAXAS & ASSOCIATES

ATTORNEYS AT LAW

1st Quarter - 2019

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Read a dedicated presentation on the dramatic regulatory changes in Italy that bring uncertainty for new energy investments in the oil and gas sector.

Note from the editor

2019 kicked off with numerous challenging developments for Metaxas & Associates, as well as for the Greek and European energy market.

In this issue we present our recent practice highlights accompanied with articles, analysis and opinions on critical issues that dominated public conversation on Energy, Competition and EU law as well as in the field of Arbitration.

Metaxas & Associates Law firm has recently successfully represented clients in their legal disputes with energy market operators and regional state-owned suppliers.

Also, a new scientific publication with the participation of members of M&A's team has been presented in Athens and Thessaloniki.

The first quarter of the year is being concluded with our company being ranked again as a Leading Law Firm by the renowned 'Chambers & Partners' Europe Guide.

In this issue, we present the recent approval by the European Parliament of four legislative acts that mark the change of an era for EU's energy policies.

On Arbitration issues, we present the dramatic regulatory changes in Italy that bring uncertainty for new energy investments and explore its relations to the Energy Charter Treaty.

On EU energy regulation, we present the political agreement between the Commission, the Parliament and the Member States, on gas pipelines from third countries.

On State Aid, we present an article about the European Commission approval of a voucher scheme for faster broadband services in Greece.



Recent practice highlights

- **Metaxas & Associates ranked as leading Law Firm by Chambers & Partners in their Chambers Europe Guide.**

Metaxas & Associates Law Firm has been ranked for a consecutive year as leading Law Firm by the reputable guide “Chambers & Partners” in their Chambers Europe Guide.

The guide emphasizes that Metaxas & Associates is considered to have “unsurpassed expertise” in both the Greek and European electricity markets, offering excellent consulting services on a wide range of regulatory issues on the most important cases regarding the energy market. M&A Law Firm is also highly recognized for its specialization in the field of Competition law and EU law.



- **Two presentation events for the new book “Transformation of EU and Eastern Mediterranean Energy Networks” took place in Athens and Thessaloniki, on the 7th and 12th of March with the support of the University of Athens and the University of Macedonia.**

In **Athens**, the book was presented by Professor Maniatis, former Minister of Energy and Environment, Mr. Apsouris, Legal Counsel of the Hellenic Petroleum Group, Dr. Karakatsani, Member of the Board of the Greek National Regulation Authority and Mr. Avlonitis, Member of the Board of Directors at Hellenic Energy Exchange.

In **Thessaloniki**, the book was commented by US Consul General, Mr. Gregory W. Pfleger Jr, Professor Ilias Kouskouvelis, Dean of the School of Social Sciences and former Rector of the University of Macedonia, Mr. Giannis Bassias, President & CEO of the Hellenic Hydrocarbon Resources Management Company, and Dr. Spyros J. Kiartzis, Manager New Technologies and Alternative Energy Sources of Hellenic Petroleum S.A.





Recent practice highlights

- **Prof. Dr. A. Metaxas was invited speaker in the CESEC Electricity Plenary and Working Group in Brussels on 21st of January.**

Prof. Dr. A. Metaxas, Chairman of the Hellenic Energy Regulation Institute and Managing Partner of M&A Law Firm, has been invited by the European Commission to participate as speaker in the important CESEC Electricity Plenary and Working Group on 21st of January in Brussels.



- **M&A Law Firm was selected as national expert for Greece & Cyprus for a DG COMP study on the enforcement of State Aid rules by national courts.**

Metaxas & Associates Law Firm has the privilege to be selected as the national expert for Greece and Cyprus in a new study on the



enforcement of State Aid rules and decisions by national courts in EU member-states. The study, commissioned by DG COMP, is carried out by the European University Institute in collaboration with major European legal networks and research centers. It is based on the expertise of legal firms in EU member-states that are appointed as national experts due to their proven excellent track record and expertise in legal issues related to the study.

- **M&A Law Firm's request accepted from the Greek Council of State**

The Council of State accepted the application of photovoltaic owners of the PASYFOS Association for conducting a pilot trial for damages against the State for the reduction of the guaranteed compensation prices under L. 4254/2014 (called "New Deal").

Metaxas & Associates is entrusted with the representation of the members of PASYFOS, some of which had until now only appealed before the civil courts for the matter.

This development is extremely important as the Greek Supreme Administrative Court of the country, and not individual lower courts, will be now called upon to judge the legality of the "New Deal" and the retroactive cuts suffered by many thousands of citizens owners of home photovoltaic systems.



A significant step forward for the realisation of the new electricity market design

The first quarter of 2019 has been concluded with an important step for the future of the Clean Energy Package with the adoption of new electricity market design by the European Parliament. Members of the European Parliament adopted four new normative cornerstones on the EU electricity market, thus concluding the Clean Energy Package.

More specifically, on the 26th of March the European Parliament announced the approval -with vast majorities- of the new *Electricity Market Regulation*, the *Electricity Market Directive*, the *Regulation on Risk Preparedness* and the *Regulation on the Agency for the Cooperation of Energy Regulators* (ACER).

Completion of these last four legislative acts, together with the *Governance of the Energy Union Regulation* the revised *Energy Efficiency Directive*, the revised *Renewable Energy Directive* and the *Energy Performance of Buildings Directive* that have already entered into force in 2018, complete the negotiations on the Clean Energy for All Europeans package.

Consumers will benefit substantially from the new rules, as they will have access to smart meters, dynamic pricing and the option to switch provider at no cost within a maximum period of three weeks, while by 2026 this will be shortened to 24 hours.

It stands to be noticed though, that still, under strict conditions, Member states will also be able to regulate prices temporarily to assist and protect energy-poor or vulnerable households. One of the main objectives of the new rules is to allow at least 70% of trade capacity to cross borders freely, making it easier to trade renewable energy across EU borders and hence support efforts to reach the EU's binding goal of 32 % renewables by 2030.

The new rules also address the issue of the capacity mechanisms by setting the ground for the introduction of more strict limits for MS subsidizing power stations. The overall objective is to prevent the most polluting fossil-fueled power plants in Europe from receiving state aid.



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The measures will apply to all new power plants from the date on which the Regulation enters into force and to existing ones from 2025. Capacity contracts concluded before 31 December 2019 will not be affected by the new rules.

The new electricity market design makes the energy market fit for the future and places the consumer at the center of the clean energy transition. It allows more flexibility in order to accommodate an increasing share of renewable energy in the grid, helps electricity to move freely to where it is most needed and keeps energy costs and prices in check by facilitating the increase of cross-border trade and competition.

Furthermore, in order to maintain the ability to better regulate the EU electricity market, the rules establishing the Agency for the Cooperation of Energy Regulators (ACER) has been amended and the agency will receive more tasks and power.

In order for the process to be concluded, the Council of Ministers of the EU will have to formally approve the texts of the Directive and three Regulations for the new legislation to be published in the Official Journal of the Union.

After their publication in the Journal, the Electricity Regulation will be applied from the 1st of January 2020, while the other Regulations will enter into force immediately.

The Directive will have to be implemented into national law by the Member States within 18 months.



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Arbitration on Oil & Gas exploration

In February 2019, Act No. 12/2019 by the Italian Parliament was published in the country's Official Gazette. The law is titled "Conversion into law, with amendments, of Decree Law No. 135 of December 14, 2018, containing urgent provisions on support and simplification for companies and public administration".

The abovementioned law imposed a plethora of regulatory changes in the hydrocarbon sector of Italy, and consequently raised multiple obstacles towards oil and gas investors and stakeholders.

To begin with, Article 11 - quarter provides for a temporary 18 month suspension period, with a possible extension of six more months. The provision reads that all exploration permissions must be suspended. New requests for granting permissions for production of hydrocarbons must be suspended as well. Throughout the holdback of all related activities, both Minister of Economic Development and Minister of Environment have to work together to pass a Decree regarding a "Plan for the Sustainable Energy Transition of Eligible Areas (PiTESAI)".

That Plan targets to fashion a framework in which all appropriate areas for exploration and production of hydrocarbons are pre-defined. Although, it should be noted that those activities must be in accordance with the protection of the environment and the social and economic implications. The adoption of that Decree will result to the revocation of all possible already granted exploration permissions, in the event they are not compatible with the Plan. At the same time, all pending applications for exploration and production of hydrocarbons will be rejected, apart from the ones granted before the imposition of the Plan, while no new applications may be filed. An additional impact of the scheme is that the administrative fees on hydrocarbon activities will be significantly increased.

The Italian administration plans to utilize those resources in the form of a Fund in order to deal with investment arbitration disputes that are likely to be raised by foreign investors.

A relevant case held before the ICSID (International Centre for Settlement of Investment Disputes) tribunal, the Rockhopper Italia S.p.A., Rockhopper Mediterranean Ltd, and Rockhopper Exploration Plc v. Italian Republic (ICSID Case No. ARB/17/14), could be setting the framework for future arbitration disputes for the Italian energy sector.



A plethora of regulatory changes in the hydrocarbon sector of Italy, raises multiple obstacles towards oil and gas investors and stakeholders



The dispute raising the Energy Charter Treaty as the applicable International Investment Agreement, refers to claims arising out of the decision in February 2016 by the country's Ministry of Economic Development not to award the claimants a production concession covering the Ombrina Mare field located within 12 miles of the coast of Italy, following the Government's re-introduction of a general ban on oil and gas exploration and production activity within the 12 mile limit of the coastline.

Although Italy declared its withdrawal from the Energy Charter Treaty in 2015, impending claims should still be expected, due to the Treaty's Sunset Provision in Article 47(3) regarding investments made before the withdrawal. Under this, foreign investors have the capacity to use the dispute resolution procedures provided in the Treaty for a period of twenty 20 years from the date when the withdrawal takes effect, which in the case of Italy was in 2016.

To that end, Italy's choice to withdraw from the ECT could be seen within the wider context of the public conversation on the European Commission's position concerning the compatibility of Investor-State Dispute Resolution procedures with the EU's internal judicial mechanisms.

Italy, especially after the withdrawal from the ECT seem to be introducing a discouraging field for future investments in the Energy sector, as well as creating a troubled environment for existing ones, thus raising concerns in relation to the county's critical role for EU's Energy Union policy.



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State Aid: The European Commission approved a voucher scheme for faster broadband services in Greece

Commission approved, under EU State aid rules, a €50 million voucher scheme to support the take-up in Greece of broadband services with download speeds of at least 100 Megabit per second. The measure will contribute to reducing the digital gap while limiting distortions of competition.

The Greek authorities aim to increase the number of consumers using "Superfast Broadband Services", which are defined by Greece as broadband services ensuring download speeds of at least 100 Megabits per second (Mbps), readily upgradable to 1 Gigabit per second (Gbps).

The infrastructure able to provide those broadband services is already available in Greece; however, the take-up is very low. The vouchers will support increased take-up by covering part of the set-up costs and of the monthly fee for a maximum of 24 months, while users will be able to activate the vouchers until 31 March 2020.

Greece notified the support measure for assessment by the Commission under State aid rules. The Commission found that even though the scheme is mainly aimed at consumers, it amounts to State Aid in favour of telecommunication services providers, who will be able to offer such services over existing broadband infrastructures. Therefore, the Commission assessed the measure under State Aid rules, in particular under Article 107(3)(c) TFEU.

Under this framework, the Commission has ensured that Greece will take adequate steps to avoid any undue distortion of competition and in particular will monitor that the scheme is not used to merely replace existing subscriptions to other high speed broadband services.

The scheme will be accompanied by a detailed evaluation to assess its impact and the results of this evaluation will be submitted by Greece to the Commission by December 2021. On this basis, the Commission concluded that the scheme is in line with State Aid rules and contributes to the EU strategic objectives set out in the Digital Agenda for Europe and in the Communication "Towards a European Gigabit Society".



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Energy Union: The EU concluded a political agreement to ensure that pipelines with third countries comply with EU gas rules

On Tuesday, February 12th, the European Parliament, the Council and the European Commission concluded an agreement on new rules governing import gas pipelines.

The agreement introduces rules for improving the functioning of the EU gas market, strengthening solidarity between Member States and therefore ensuring that pipelines with third countries comply with the EU gas rules.

Following the announcement by President Juncker in his 2017 State of the European Union speech, the Commission proposed common rules for gas pipelines entering the European gas market on the 8th of November 2017. These rules aimed at increasing security of supply and build upon the solidarity dimension of the Energy Union.

The aim of the proposal was to improve the existing Gas Directive (2009/73/EC) and ensure that the principles of EU energy legislation (third-party access, tariff regulation, ownership unbundling and transparency) apply to all gas pipelines to-and-from third countries. Exceptions would only be possible under strict procedures in which the Commission plays a decisive role.

The agreement on the 12th of February, meets the above-mentioned aim. It ensures that the provisions of the Gas Directive are applied on EU territory (land and sea) and provides for effective oversight to ensure the application of EU internal market rules by the national authorities supervised by the Commission. It also enhances transparency and cooperation among competent national authorities.

This is a major step towards a well-functioning, transparent and competitive EU internal gas market where all suppliers are acting under the same EU rules.

Ensuring that all major gas pipelines to and from third countries are operated efficiently under a regime of transparent regulatory oversight is expected to diminish conflicts of interests between infrastructure operators and gas suppliers, guarantee non-discriminatory tariff setting and provide legal certainty for future investment decisions.



The agreement ensures that pipelines with third countries comply with the EU gas rules.



The new rules are therefore expected to increase competition between gas suppliers and increase energy security throughout the EU.

Following this provisional political agreement, the text of the Directive will have to be formally approved by the European Parliament and the Council.

Once endorsed by both co-legislators in the coming months, the new law will be published in the Official Journal of the Union and the Directive will have to be transposed into national law within nine months.



*An agreement that
enhances
transparency and
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METAXAS & ASSOCIATES
ATTORNEYS AT LAW

M&A Law Firm, 154 Asklepiou str,
11471 Athens - Greece
www.metaxaslaw.gr
info@metaxaslaw.gr
+30 210 33 90 748