



METAXAS & ASSOCIATES

ATTORNEYS AT LAW

2nd Quarter - 2019

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Note from the editor

The second quarter of 2019 has been a rather active one in the fields of State Aid, International Dispute Settlement and Energy.

In this issue, we present the Annulment by the CJEU of the Commission's decision stating German law on renewable energy (the EEG 2012) involved State aid. According to the Court of Justice, the General Court was wrong to find that the funds generated by the EEG surcharge constituted State resources.

We also present the issues of compatibility with EU law of the mechanism for the resolution of disputes between Investors and States provided by the CETA, while on the energy front we are looking into ACER's recently published annual report on the progress of infrastructure Projects of Common Interest.

For our company Q2 of 2019 has been rather productive with M&A being hired as legal advisor of the Greek State on specific EU Law issues arising in the framework of an international arbitration procedure.

We have also been advising industrial clients in their legal dispute with a subsidiary of Piraeus Bank on a case that is critical for the future of a large number of industries in Greece.

Looking into the future, our firm is actively supporting the upcoming "4th Athens Conference on European Energy Law and Policy", taking place this September with a focus on arbitration and dispute settlement issues. We are happy to welcome and meet you there.

Read about the four exciting Sessions on Arbitration and Dispute Settlement in the 4th Athens Conference on European Energy law taking place this September in Greece at: www.energy-regulation.eu/events



Join us in Athens this September in our international conference on Arbitration and Dispute Settlement

Metaxas & Associates actively supports the upcoming “4th Athens Conference on European Energy Law and Policy on 27/9/2019

Our firm is the gold sponsor and offers scientific support in this international conference that has acquired a pan-European impact as a leading forum for the exchange of views of academics, practitioners and high-ranking officials of European institutional bodies and major energy companies.



This year, the conference will largely focus on arbitration and dispute settlement issues and their vital role for the legal protection of international investments in the energy sector.

The conference is an initiative of the Hellenic Energy Regulation Institute and this year is co-organized by the renowned and highly respected German Institute for Energy and Regulatory Law in Berlin and supported by two of the most active institutes in the field of energy related disputes, the Scottish Arbitration Centre and the International Centre for Energy Arbitration in Edinburgh.

This dynamic and multi-dimensional cooperation among four highly respected and accredited European research institutes is an indication of the scientific and practical significance of Arbitration and Dispute Settlement procedures in the energy market.

You can find info on the agenda and book one of the limited seats at: www.energy-regulation.eu/events

4th Athens Conference on European Energy Law Energy Arbitration and Judicial Dispute Settlement

ORGANIZERS



SUPPORTING INSTITUTES



September 27th 2019

Electra Palace Athens
18 - 20, N. Nikodimou Str., 10557 Athens, Greece



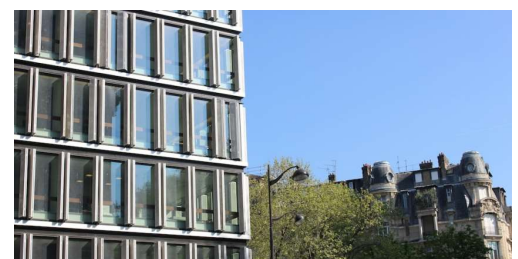
Recent practice highlights

- **M&A Law Firm has been hired as legal advisor of the Greek State** on specific EU Law issues arising in the framework of an international arbitration procedure over a multi-million military supply contract dispute with a foreign multinational company.
- **Professor Dr. A. Metaxas**, Managing Partner of M&A Law Firm, has been invited to participate, among other distinguished speakers, in the distinguished “23rd Government Roundtable with the Government of Greece” of the Economist, titled: “Europe leaving indecisiveness behind?” this July in Athens.



In his presentation, the professor analysed the reforms needed in the Greek Academic system in order to stop and reverse the brain drain issue in Greece, a fundamental perquisition for Greece's efforts to regain competitiveness in the academic and business environment in Europe.

- **M&A Law firm advises industrial clients** in their legal dispute with ETBA SA, subsidiary of Piraeus Bank. Our firm has been participating in relevant press conferences on an issue deemed critical for the future of a large number of industries in Greece.
- **The new, collective volume “The Crisis of the Rule of Law in the EU”**, edited by Prof. Antonis Metaxas with contributions by the President of the Hellenic Republic, distinguished supreme judges and prominent academics from various Member-States of the Union has been released this quarter.
- **Professor Dr. Metaxas** has been invited speaker in the scientific Conference on Opinion 1/17 in Paris.
The Conference on “Opinion 1/17: European and International Perspectives”, took place in Paris on 12-13 June 2019, and was organised by the European Law and Governance School/EPLO - Athens, the University of Oslo, Faculty of Law, the Hague University of Applied Sciences, and the Centre Universitaire de Norvège à Paris.



Annulment by the CJEU of the Commission's decision stating German law on renewable energy (the EEG 2012) involved State aid.

In 2012, Germany, legislated a law on renewable energy (EEG 2012), in order to provide support to undertakings producing electricity from renewable energy sources and mine gas (the 'EEG electricity').

On 25 November 2014, the Commission decided that the EEG 2012 involved State aid. At the same time, it was found that most of the reductions in the EEG surcharge for electricity-intensive undertakings were compatible with the EU law and thus the Commission ordered recovery for the rest of the reductions only.

Germany reacted and brought an action against the Commission decision before the General Court which was dismissed by its judgment of 10 May 2016. Germany then brought an appeal against that judgment before the Court of Justice.

Today the Court of Justice annuls the Commission decision by stating that the General Court was wrong to find that the funds generated by the EEG surcharge constituted State resources.

Firstly, the EEG surcharge cannot be considered as a levy because it is not a prerequisite -of the EEG 2012- that suppliers should pass on the final customers the amounts paid in respect of the EEG surcharge to those customers. The fact that 'in practice' the financial burden resulting from the EEG surcharge was passed on to the final customers is not sufficient in that regard.

Furthermore, the General Court was not able to prove that the State held a power of disposal over the funds generated by the EEG surcharge or even that it exercised public control over the TSOs responsible for managing those funds.



According to the Court of Justice, the General Court was wrong to find that the funds generated by the EEG surcharge constituted State resources



The compatibility with EU law of the mechanism for the resolution of disputes between Investors and States provided by the CETA

One of the aims of the CETA, the free trade agreement between Canada and the EU and its Member States, is to establish an “Investment Court System” (ICS) between investors and States.

In September 2017 Belgium requested the opinion of the Court of Justice concerning the compatibility of this mechanism for the resolution of disputes with EU primary law.

In Opinion 1/17, the Court states that the creation of a court responsible for the interpretation of an international agreement has no effect on the autonomy of the EU legal order, which is based on its own constitutional framework. More specifically, the Treaties have established a judicial system in order to ensure consistency and uniformity in the interpretation of EU law. Therefore, the creation of a multilateral investment tribunal, which aims to interpret and apply the provisions of the CETA, is compatible with EU law.

It stands to be noticed that the CETA does not confer on the envisaged tribunals any jurisdiction to interpret or apply EU law other than relating to the provisions of that agreement. Furthermore, the CETA contains provisions that deprive those tribunals of any power to question the choices that have been democratically made within a Party to that agreement in relation to the level of protection of the fields of public interest.

The Court also observes that the envisaged mechanism is compatible with the general principle of equal treatment and that the CETA does not undermine the effectiveness of EU law. As regards the compatibility of the mechanism with the right of access to an independent tribunal, the Court concludes that the agreement seeks to ensure that the CETA Tribunal is accessible to enterprises and natural persons of Canada that invest within the EU and of Member States of EU that invest in Canada. However, this mechanism might be accessible in practice only to investors who have significant financial resources and not to small medium-size enterprises and natural persons. The approval of that agreement by the EU depends on the commitment that the accessibility to small enterprises will be sufficient.

Last but not least, the CETA contains sufficient safeguards to ensure the independence of the Members of the envisaged tribunals.



The Court states that the creation of a court responsible for the interpretation of an international agreement has no effect on the autonomy of the EU legal order



ACER publishes annual report on the progress of infrastructure Projects of Common Interest

Progress of Projects of Common Interest (PCIs) for trans-European Energy Infrastructure in electricity and gas has been the focus of the most recent annual report published by ACER this quarter. The report examines how the projects on the third EU list of PCIs evolved in the past year.

The Agency notes that 23 electricity and 9 gas PCIs advanced their status during the monitored period. ACER reports that more than 40% of PCIs are in the permitting phase, while about 25% of the electricity and 15% of the gas PCIs are under construction or already commissioned.

Despite the overall progress, the commissioning dates for almost half of the PCIs have been delayed or postponed on average by 1.5 years compared to the dates foreseen in previously reported schedules, adding up to the accumulated delays that are repeatedly noted in the Agency's annual PCI monitoring reports.

The investment costs for the electricity PCIs amount to €49.5 billion, while for the gas PCIs they amount to €42.9 billion. These figures represent an increase of less than 2% for electricity PCIs and a decrease of 1.4% for gas PCIs compared to the expected overall budget of the same projects in 2018.

The report underlines that the promoters' interest to use the array of available regulatory tools in the EU Regulation for trans-European energy infrastructure remained relatively low.

The tools most frequently used by the promoters are the submission of investment requests and the resulting issuing of cross-border cost allocation (CBCA) decisions. The actual and planned filing of applications for project specific risk-related incentives occur only in exceptional cases.



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