



METAXAS & ASSOCIATES
ATTORNEYS AT LAW

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IN THIS ISSUE:

Our Law Firm's Recent Practice Highlights

ICC's Task Force Report on Arbitration of Climate Change Related Disputes

The European Green Deal

CJEU's landmark Judgments on the Polish Judicial System and the Rule of Law in the EU

Note from the Editor

The last quarter of 2019 has been rather intensive for M&A Law Firm with important mandates and legal successes in its core practice areas of Energy, Competition, State Aid, EU Law and International Dispute Settlement.

- Our Firm had the honour to be awarded for a second consecutive year by the Energy Charter Secretariat for its substantial contribution to the Energy Investment Risk Assessment Report of 2019.
- Also, we have successfully represented RES producers in their judicial disputes over interest payments of electricity sales invoices due to significant payment delays by the Operator of RES & Guarantees of Origin (DAPEEP S.A.).
- In addition, M&A has been hired as legal advisor by both the Hellenic Gas Transmission System Operator (DESFA S.A) and the Independent Power Transmission Operator (ADMIE) S.A. in scientifically demanding legal Mandates.
- Last, our Law Firm actively supported and successfully participated in several international conferences during the last three months.

Besides our Firm's highlights, in this issue, we present three important and intriguing issues amongst current developments in the European legal environment:

- Firstly, the highly anticipated Report by the ICC's Task Force on Arbitration of Climate Change Related Disputes, examining the role for Arbitration and ADR in the resolution of international disputes related to climate change.
- Secondly, the European Green Deal, a roadmap with actions to boost the efficient use of resources by moving to a clean, circular economy, recently published by the European Commission's President Ursula von der Leyen.
- Thirdly, we present the CJEU's landmark judgments on the Polish judicial system.

As we look back upon the past year, we would like to acknowledge those who have helped us shape and significantly expand our business. Warmest and heartiest thanks for this great year, and we would like to wish you all a most prosperous and fruitful New Year 2020.

 <p>Sigmar Polke, The Spirits That Lend Strength Are Invisible III, 1988 https://curator.com/art/sigmar-polke/the-spirits-that-lend-strength-are-invisible-iii</p>	<p>Season's Greetings</p> <p><i>Our Firm wishes you a Prosperous New Year!</i></p> <p><i>This Year we provide support again for ELEFAP Hellenic Society for Disabled Children and wish every success to its effort!</i></p> <p><i>We thank you for your support in 2019 looking forward to continuing our cooperation with you.</i></p> <div data-bbox="781 1759 976 1801"> Hellenic Energy Regulation Institute</div> <div data-bbox="1019 1728 1198 1808"> METAXAS & ASSOCIATES ATTORNEYS AT LAW</div>
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Practice Highlights

M&A Law Firm was selected as a legal expert for two EU Member States, Greece and Cyprus, and honoured to provide its expertise in EU Law and State Aid for the development of this elaborate and important study for DG Comp in collaboration with major European legal networks and research centres. The objective of the Study was to provide the state of play of State aid enforcement by national courts in the EU.

The analysis covered both public and private enforcement of State aid rules and included the use of an extended number of statistics, as well as the identification of a number of qualitative trends and a comparison with earlier relevant research.

The objective was also to identify a number of best practices in relation to the enforcement of State aid by the national courts of the Member States. This elaborate analysis included 145 case summaries and 28 country reports in its annexes which are publicly available on the following project website <https://state-aid-caselex-accept.mybit.nl/>

The Hellenic Council of State has ruled that basic pillars of the 2016 social security legislation (4387/2016) are unconstitutional according to a set of judgments published on Friday, 4 October 2019.

M&A Law Firm successfully represented its clients in this landmark trials and welcomed this positive outcome



Practice Highlights

M&A Law Firm has been hired as legal advisor of the Hellenic Gas Transmission System Operator (DESFA S.A) on various Competition and Energy Law issues arising in the framework of a complex congestion management case.



M&A Law Firm has been asked to provide expert legal advice to the Independent Power Transmission Operator (ADMIE) S.A. on specific EU Energy law requirements corresponding to the model of proprietary separated TSO (Ownership Unbundling).



Professor Dr. Antonis Metaxas, Managing Partner of Metaxas & Associates Law Firm and Chairman of the Hellenic Energy Regulation Institute participated as an invited speaker in the Greek Wind Energy Development Policy panel of the WIND Mission Greece 2019 Conference, organized by The Voice of Renewables and Parity Platform, that took place in Athens (Greece) on 14-15 October at the American College of Greece.

M&A Law Firm sponsored the leading Renewable & Storage Forum, organized by energypress.gr in Athens on October 24th, 2019.



Mr. Stathis Kakounis, Partner at Metaxas & Associates Law Firm, participated as invited speaker at the Conference and presented his analysis on the current status and perspectives of Renewable Energy Sources in Greece, highlighting the importance of the legal and regulatory transparency and safety for the RES development, focusing on the current licensing process and codification of RES legislation in Greece as well as on the current and future challenges arising from the European legal framework for the RES support.



Practice Highlights

M&A Law Firm has been awarded for a second consecutive year by the Energy Charter Secretariat for its contribution to the Energy Investment Risk Assessment Report of 2019.

M&A had the privilege to be invited as the expert Law Firm for Greece to be part of the distinguished team of energy experts that prepared the EIRA 2019 report.

Further to the publication of the collective volume "The Crisis of Law in the EU", edited by our Managing Partner **Professor Dr. Antonis Metaxas**, Eurasia Publications organized on November 27th a scientific event under the title: "The European Union (EU) as "Rechtsstaat" – Is the Rule of Law in the EU today under threat?".

Distinguished invited speakers were namely **Ms Aikaterini Sakellariopoulou**, President of the Hellenic Council of State (CoS),

Mr. Evangelos Venizelos, Former Vice President of the Government & Professor of Constitutional Law,

Mr. Ioannis Sarmas, President of the Hellenic Court of Auditors,

Mr. Christos Rammou, President of the Hellenic Authority for Communication Security and Privacy (ADAE) and Honorary Vice-President of the Council of State (CoS), and

Asst. Professor Dr. Antonis Metaxas, NKUA/TU Berlin.

The panel discussion was coordinated by **Mr. Konstantinos Menoudakos**, President of the Hellenic Data Protection Authority and Honorary President of the Council of State (CoS).



Practice Highlights

M&A Law Firm sponsored the 3RD BALKAN & EASTMED ENERGY LAW FORUM, organized by Palladian Conferences under the auspices of the Hellenic Energy Regulation Institute, that took place on the November 29th, 2019 in Athens.

Professor Dr. A. Metaxas was an invited speaker and moderated the very interesting panel, under the title “Greece as alternative source of Gas Supply for the Balkans”.

Professor Dr. Antonis Metaxas participated as invited Member of the Judging Committee in the Energy Mastering Awards 2019, organized by Boussias Communications on December 12th, 2019 rewarding best scientific practices for energy efficiency, savings, sustainability and environmental protection.



The ICC Report on Resolving Climate Change Related Disputes through Arbitration and ADR

The highly anticipated ICC Report by the ICC's Task Force on Arbitration of Climate Change Related Disputes has been released late in November.

The report examines the role for Arbitration and ADR in the resolution of international disputes related to climate change. It defines climate change related disputes and explores current and potential use and benefits of ICC Arbitration and ADR services to resolve such disputes.

In its report, the Task Force identifies six broad features that potentially enhance the existing procedures to further improve their effectiveness for resolving climate change related disputes. These features include:

- Securing relevant expertise, scientific, technical or otherwise, to ensure that decisions reflect sound and up-to-date knowledge in a new and fast-moving area.
- Highlighting opportunities to use faster and more effective procedures commensurate with the complexity, urgency and special sensitivities of a collaborative climate change response.
- Exploring the opportunity for integration of climate change policy, commitments or law into the dispute resolution procedure.
- Weighing the possible benefits of some increased measure of transparency.
- Considering options for third party involvement in the dispute resolution procedure.
- Addressing the role of costs in ensuring that appropriate stakeholders are able to participate in the dispute resolution process.

The Task Force takes a broad view of climate change related disputes, to include any dispute arising out of or in relation to the effect of climate change and climate change policy, the United Nations Framework Convention on Climate Change and the Paris Agreement.

You can find the full report here:

<https://iccwbo.org/content/uploads/sites/3/2019/11/icc-arbitration-adr-commission-report-on-resolving-climate-change-related-disputes-english-version.pdf>



The Report looks into existing and anticipated climate change-related disputes and the benefits of using arbitration to resolve them

ICC COMMISSION REPORT
Resolving Climate Change
Related Disputes through
Arbitration and ADR



Hypothetical cases are used throughout the Report to demonstrate the potential circumstances in which climate change related disputes may arise

The European Green Deal



The European Green Deal sets out how to make Europe the first climate-neutral continent by 2050, boosting the economy, improving people's quality of life

On December 11th, 2019 the President of the European Commission Ursula von der Leyen presented “The European Green Deal”, a roadmap with actions to boost the efficient use of resources by moving to a clean, circular economy and stop climate change, revert biodiversity loss and cut pollution. The European Green Deal covers all sectors of the economy, notably transport, energy, agriculture, buildings, and industries such as steel, cement, ICT, textiles and chemicals. It outlines investments needed and financing tools available, and explains how to ensure a just and inclusive transition.

To set into legislation the political ambition of being the world's first climate neutral continent by 2050, the Commission will present within 100 days the first “European Climate Law”. To reach EU’s climate and environmental ambition, the Commission will also present the Biodiversity Strategy for 2030, the new Industrial Strategy and Circular Economy Action Plan, the Farm to Fork Strategy for sustainable food, and proposals for a pollution-free Europe.

Meeting the objectives the current 2030 climate and energy targets have set through the European Green Deal, will require significant investment. Almost €260 billion of additional annual investment, representing about 1.5% of 2018 GDP, will need the mobilization of the public and private sectors. The Commission will present in early 2020 a Sustainable Europe Investment Plan to help meet investment needs. At least 25% of the EU's long-term budget should be dedicated to climate action, and the European Investment Bank, will provide further support. In regard to the contribution of the private sector on financing the green transition, the Commission will present a Green Financing Strategy in 2020.

In order to provide access to reskilling programmes and create employment opportunities in new economic sectors, it is noteworthy that a “Just Transition Mechanism” will support the citizens most vulnerable to the transition.

Moreover, in March 2020, the Commission will launch a ‘Climate Pact’ to give citizens a voice and role in designing new actions, sharing information, launching grassroots activities and show-casing solutions that others can follow.

CJEU's Landmark Judgments on the Polish Judicial System

The Court of Justice of the European Union (CJEU) issued two landmark judgments on November 19th 2019 with regard to the independence of the judiciary in Poland (case C-192/18 and joined cases C-585/18, C-624/18 and C-625/18). The first case involved the provisions reducing the retirement age of judges and public prosecutors and the second referred to the newly established Disciplinary Chamber of the Supreme Court.

In the first judgment of 5 November 2019, the CJEU considered the amendments to the law on the organisation of ordinary courts, which lower the retirement age of ordinary court judges and prosecutors (to 60 years for women and 65 years for men, down from 67 years for both sexes), whilst allowing the Minister of Justice to decide on the prolongation of their active service.

The Court found that by establishing a different retirement age for men and women who were judges or public prosecutors, Poland infringed Article 157 TFEU, under which each Member State must ensure the principle of equal pay for male and female workers for equal work, as well as Directive 2006/54 on equal treatment in occupational social security schemes.

Furthermore, the Court highlighted that the ordinary Polish courts might be called upon to rule on questions connected with EU law, therefore they shall meet the requirements inherent in such protection, in that vein, maintaining their independence is essential to ensure their ability to offer that protection.

The Court declared that Poland failed to fulfill its obligations under the second subparagraph of Article 19(1) TEU (the principle of the effective judicial protection of individuals' rights under EU law), as the Minister of Justice's power to decide whether individual judges can continue past the newly stipulated retirement age does not comply with the principle of irremovability.

The second judgment dealt with the effect of the lowering of the retirement age of the judges on the independence judiciary. In the first one (C-619/18), issued on 24 June 2019, the CJEU ruled that the Polish 'Law on the Supreme Court', which lowered the retirement age of judges of the Supreme Court, is contrary to EU law and breaches the principle of the irremovability of judges

The Court declared that Poland failed to fulfill its obligations under the principle of the effective judicial protection of individuals' rights under EU law.



and thus that of judicial independence. In the Polish government's view the CJEU should not have rendered judgment as it *"concerns a historical condition which does not reflect the current provisions"*. Currently the retirement age has been equalized and the extension of active service of the judges in ordinary courts is now decided by the National Council of the Judiciary (KRS).

In addition, on October 2019 the European Commission referred the new disciplinary system for judges in Poland to the European Court of Justice, arguing that this system was incompatible with the TEU. The Court issued its preliminary ruling on 19 November 2019 related to the independence of the newly created Disciplinary Chamber within the Polish Supreme Court, which has the power to discipline judges both for their conduct and for the content of their rulings. The judges of this chamber are appointed by the President of the Republic on a proposal of the KRS.

The Court underlined that Article 47 of the Charter of Fundamental Rights and Article 19(1) TEU were applicable and held that the requirement that courts be independent formed part of the essence of the right to effective judicial protection and the fundamental right to a fair trial. It also mentioned that the objective circumstances in which the court was formed, its characteristics and the means by which its members have been appointed are, inter alia, specific factors which must be examined in order to assess whether the Disciplinary Chamber offers sufficient guarantees of independence.

The issue at stake in Poland today is the future of the EU as a project based on core principles such as the rule of law, separation of powers and human rights. The stakes for all Europeans could not be higher. Member states must warn the Polish government against the grave consequences of undermining the independence of courts, while requesting information from the Polish government about how it intends to prevent this. Overall, the goal would be to restore the conformity of the Polish legal system with European standards.

The Court held that the requirement for courts independence, formed part of the essence of the right to effective judicial protection and the fundamental right to a fair trial.





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