

Metaxas & Associates Law Firm

Newsletter

JULY 2020



METAXAS & ASSOCIATES
ATTORNEYS AT LAW

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Note from the Editor

The first half of 2020 was characterized by the considerable impact of COVID-19 pandemic crisis with unprecedented and unforeseen effects on human, business, and state activity. Throughout these challenging circumstances, M&A Law firm has achieved to remain fully active in its core practice areas of Energy, Competition, State Aid, and International Dispute Settlement.

- *M&A Law Firm had the honour to be awarded as Top-Tier Law Firm in Energy by the Legal 500 EMEA 2020 Guide and Chambers Europe 2020 rankings. At the same time, Prof. Metaxas was awarded as Top Energy Lawyer in Greece by Chambers.*
- *Our Law Firm acted as legal advisor, contributing to the successful closing of a complex takeover of a significant PV portfolio in Greece by our clients, a French Private Equity Fund.*
- *In addition, M&A acted as legal advisor by both the Hellenic Gas Transmission System Operator (DESFA S.A) and the Independent Power Transmission Operator (ADMIE) S.A.*
- *Furthermore, our Law Firm advised on several operating solar parks and wind farms projects in Greece, including in depth Due Diligence drafting and revising of complex refinancing contractual documents.*

In this Issue, we present three significant issues amongst current developments in the European legal environment:

- *The newly published Commission's White Paper on Foreign Subsidies in the Single Market, which launches a public consultation for rules to be adopted next year.*
- *The European Green Deal progress during Covid-19 pandemic, outlining the transition to Circular Economy and its Action Plan.*
- *The BVerfG landmark "Ultra Vires" Judgment regarding ECB's Public Sector Purchase Programme (PSPP).*

Last, but not least, we would like to warmly thank all our clients for their continuous support and contribution both to Legal 500's and Chambers' Europe 2020 research and reviews. Our Firm's top rankings confirm the distinguished level of client service and scientific specialization we offer, which is the core priority for all of us at M&A Law Firm.

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M&A Law Firm awarded as Top-Tier Law Firm in Energy by Legal 500 and Chambers and Prof. Metaxas as Top Energy Lawyer in Greece by Chambers

M&A Law Firm has been ranked for a consecutive year as leading Law Firm by the reputable “Chambers & Partners” in their **Chambers Europe 2020** guide that was published in March.

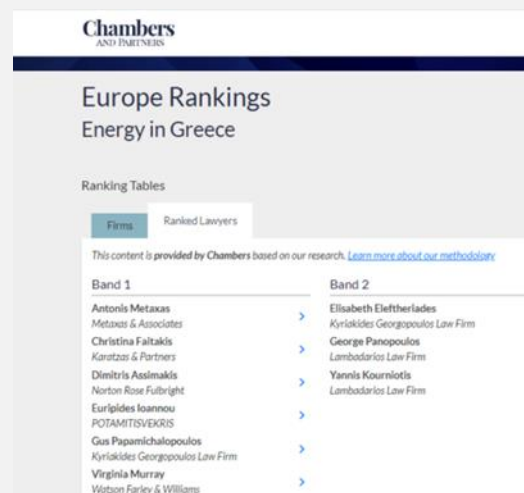
The Guide emphasizes that M&A Law Firm is admired for its niche expertise in energy mandates involving state aid, competition and EU law, offering excellent consulting services on a wide range of regulatory issues on the most important cases regarding the energy market.

Interviewees described M&A Law Firm as “*the most specialized team in EU energy law,*” adding that the lawyers “*combine academic knowledge and practical experience.*”. According to Chambers Europe 2020 guide, **Prof. Dr. A. Metaxas**, Managing Partner of M&A Law Firm, has been ranked as **the top lawyer in the Energy law practice in Greece.**

Antonis Metaxas is widely recognized as an “*expert in energy and state aid, and their interface*” with particular expertise in mandates pertaining to regulatory, competition and EU law. In the report by Chambers, Prof. Metaxas is lauded by clients for showcasing a “*perfect balance of academic knowledge and commercial solutions.*”.



“M&A Law Firm is the most specialized team in EU energy law, combining academic knowledge and practical experience.”



Europe Rankings Energy in Greece	
Ranking Tables	
Firms	Ranked Lawyers
This content is provided by Chambers based on our research. Learn more about our methodology	
Band 1	Band 2
Antonis Metaxas Metaxas & Associates	Elisabeth Eleftheriades Kyriakides Georgopoulos Law Firm
Christina Faltakis Karatzas & Partners	George Panopoulos Lambadaris Law Firm
Dimitris Assimakis Norton Rose Fulbright	Yannis Kourniotis Lambadaris Law Firm
Euripides Ioannou POTAMITSEKIS	
Gas Papamichalopoulos Kyriakides Georgopoulos Law Firm	
Virginia Murray Watson Farley & Williams	

“Prof. Metaxas is showcasing a perfect balance of academic knowledge and commercial solutions.”.

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Following the top rankings in Chambers Europe 2020, **M&A Law Firm** has been awarded as Top-Tier Law Firm in Energy by the prestigious **Legal 500 EMEA 2020 Guide**, which was officially launched on April 15, 2020.

The Managing Partner **Prof. Dr. Antonis Metaxas**, is ranked as "**Leading Individual**" both in Energy and EU/Competition Law, while Partner **Stathis Kakounis** and Senior Associate **Ioannis Floros** are ranked as "**Next Generation Partners**" in Energy and EU/Competition Law respectively.

In its analysis, the EMEA 2020 edition acknowledges that Metaxas & Associates Law Firm is a 'top legal firm for energy, EU and State Aid/Competition Law' highlighting that M&A Law Firm is noted for its 'profound expertise in the EU regulatory framework' and its top quality legal services to clients according to European best practices and standards.

The report underscores that:

"Managing Partner Antonis Metaxas, who has a 'rare combination of professional and academic knowledge', oversees the Energy Department of the Firm alongside Efstathios Kakounis, who is praised for his 'excellent counselling on complex energy issues'. The team also handles development, project financing, legislative compliance, competition and contentious matters, with experience appearing before the Regulatory Authority for Energy, the European Commission, and EU Courts."

"The practice was recently bolstered by the arrival of Ioannis Floros, who joined from the position as chief legal counsel to the Minister of Finance."



"It should be mentioned that their level is closer to European standards rather than typical Greek, while Professor Metaxas's impressive expertise in energy regulation has been valuable for our needs. I find that his academic background made the difference concerning the depth of consultation we received from them."



"M&A Law Firm is 'widely known in the Greek legal market for its profound expertise and quality in EU law and competition'. The group represents clients in abuse of dominance cases and claims of anti-competitive behaviour and state aid cases the latter considered as the top tier practice and expertise of the Firm in the Greek Legal Market. The department is jointly headed by Prof. Antonis Metaxas and Ioannis Floros, who is considered as 'a top-quality expert in EU law'."

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Practice Highlights

M&A Law Firm has been hired as legal advisor by 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 Greek Independent Power Transmission Operator (ADMIE) S.A. on specific EU Energy Law requirements corresponding to the model of proprietary separated TSO (Ownership Unbundling).



M&A had the honour and privilege to be invited for a third consecutive year as the expert Law Firm for Greece to be part of the distinguished team of energy experts that prepared the Energy Investment Risk Assessment (EIRA) report, which is a publication of the Energy Charter Secretariat that evaluates specific risks affecting energy investment that can be mitigated through adjustments to policy, legal and regulatory frameworks.



M&A Law Firm acted as legal advisor, contributing to the successful closing of a complex takeover of a significant PV portfolio in Greece by our clients, a French Private Equity Fund. The legal work included targeted legal advice on all legal aspects of the envisaged transaction and the negotiation with the Banks and financial institutions involved in the project.



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Practice Highlights

M&A Law Firm has been hired by a further major private equity fund to act as legal advisor in the envisaged 50 Million Euros transaction of an investment portfolio, including operating solar parks and wind farms projects in Greece. The legal work included in depth Due Diligence drafting and revising of complex refinancing contractual documents.



Dr. Charikleia Andrikopoulou, Attorney at Law at **M&A Law Firm**, published an article in European State Aid Law Quarterly (Issue1/2020, Lexxion Publisher, Berlin, Germany) under the title *“Financial Measures Toward Mitigation of COVID-19 Coronavirus Effects in Greece”*.

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Commission adopts White Paper on Foreign Subsidies in the Single Market

The European Council in its meeting-Conclusions on March 2019 had tasked the Commission to identify new tools to address the distortive effects of foreign subsidies on the Single Market. In its March 10, 2020 Communication “*A New Industrial Strategy for Europe*”, the Commission confirmed that by mid-2020 it would adopt a White Paper on an Instrument on Foreign Subsidies, to address distortive effects caused by foreign subsidies within the Single Market. As planned, the European Commission adopted the White Paper and now seeks views and input from all stakeholders on the options set out in it.

Subsidies by Member States have always been subject to EU State Aid rules to avoid distortions, as EU competition rules, trade protection instruments, and public procurement rules, play an important role in ensuring fair conditions for companies in the Single Market. Subsidies granted by non-EU governments to companies in the EU appear to have an increasing negative impact on competition in the Single Market but fall outside EU State aid control. There is a growing number of instances in which foreign subsidies seem to have facilitated the acquisition of EU companies or distorted the investment decisions, market operations or pricing policies of their beneficiaries, or distorted bidding in public procurement, to the detriment of non-subsidized companies.

Moreover, the existing trade protection rules relate only to exports of goods from third countries and thus do not address all distortions caused by foreign subsidies granted by non-EU countries. As there is an obvious regulatory gap on where foreign subsidies take the form of financial flows facilitating acquisitions of EU companies and where they directly support the operation of a company in the EU, the White Paper proposes solutions and calls for new tools to facilitate bidding in a public procurement procedure.



The European Commission adopted a White Paper on levelling the playing field as regards foreign subsidies dealing with the distortive effects caused by foreign in the Single Market



Executive Vice-President Margrethe Vestager, in charge of competition policy and responsible for the cluster Europe Fit for the Digital Age, said: “White Paper launches an important discussion on how to address effects caused by foreign subsidies. The Single Market is key to Europe's prosperity and it only works well if there is a level playing field.”

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As a result, it puts forward several approaches. The first three options (so-called “Modules”) aim at addressing the distortive effects caused by foreign subsidies in the Single market generally (Module 1), in acquisitions of EU companies (Module 2) and during EU public procurement procedures (Module 3). These Modules may be complementary rather than alternatives to each other. The White Paper also sets out a general approach to foreign subsidies in the context of EU funding.

Module 1 proposes the establishment of a general market scrutiny instrument to capture all possible market situations in which foreign subsidies may cause distortions in the Single Market. Under this Module, the supervisory authority, which would be a national authority or the Commission, could act upon any indication or information that a company in the EU benefits from a foreign subsidy. If the existence of a foreign subsidy is established, the authority would then impose measures to remedy the likely distortive impact, such as acquisition blocks and redressive payments, structural or behavioural remedies. However, the authority shall take into account any positive impact by the subsidised activity or investment, and in case it outweighs the effects of the distortion, it will not pursue the investigation further (the “EU Interest Test”).

Module 2 is intended to specifically address distortions caused by foreign subsidies facilitating the acquisition of EU companies. This module aims at ensuring that foreign subsidies do not confer an unfair benefit on their recipients when acquiring (stakes in) EU companies, either directly by linking a subsidy to a given acquisition or indirectly by de facto increasing the financial strength of the acquirer. Under Module 2, companies benefitting from financial support of a non-EU government would need to notify their acquisitions of EU companies, above a given threshold, to the competent supervisory authority.

The White Paper proposes that the Commission is the competent supervisory authority. Transactions could not be concluded whilst the Commission's review is pending. Should the supervisory authority find that the acquisition



“With White Paper we deliver a key element for our vision of Europe's New Industrial Strategy based on competition, open markets and a strong Single Market. The level playing field in the Single market is at the heart of this initiative and will help our companies operate and compete globally and thus promote the EU's open strategic autonomy. As part of our Single Market rule book we need to prevent foreign subsidies from distorting procurement procedures and ensure that firms benefit from fair access to public contracts.”
Thierry Breton, Commissioner for the Internal Market

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is facilitated by the foreign subsidy and distorts the Single Market, it could either accept commitments by the notifying party that effectively remedy the distortion or, as a last resort, it could prohibit the acquisition. Under this Module, the Commission could also apply the EU Interest Test.

Module 3 addresses the harmful effect of foreign subsidies on the conduct of EU public procurement procedures.

Foreign subsidies may enable bidders to gain an unfair advantage, for example by submitting bids below market price or even below cost, allowing them to obtain public procurement contracts that they would otherwise not have obtained. Under this Module, the White Paper proposes a mechanism where bidders would have to notify the contracting authority of financial contributions received from non-EU countries. The competent contracting and supervisory authorities would then assess whether a foreign subsidy exists and whether this element made the procurement procedure unfair. In such a case, the bidder would be excluded from the procurement procedure.

In the context of EU funding, the White Paper outlines ways to address the issue of foreign subsidies in the case of applications for EU financial support. All economic operators should compete for EU funding on an equal footing. Foreign subsidies may, however, distort this process by putting the beneficiaries of such subsidies in a better position to apply.

The White Paper proposes options to prevent such unfair advantage. Among others, in case of funding distributed through public tenders or grants, a similar procedure would apply as the one foreseen for EU public procurement procedures. Furthermore, the White Paper highlights the importance of ensuring that international financial institutions that implement projects supported by the EU budget, like EIB or EBRD, mirror the approach to foreign subsidies.

The White Paper will be open for public consultation until 23 September 2020. In light of the input received, the Commission will present appropriate legislative proposals to tackle the distortive effects of foreign subsidies on the Single Market.



"The EU is amongst the most open economies in the world, attracting high levels of investment from our trading partners. However, our openness is increasingly being challenged through foreign trade practices, including subsidies that distort the level playing field for companies in the EU. Along with other tools available at EU level such as foreign direct investment screening and trade defence measures, the White Paper is a welcome addition to the toolbox for our open strategic autonomy."

Phil Hogan, Commissioner for Trade

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The European Green Deal progress during the Covid-19 pandemic

The COVID-19 pandemic has created new challenges for green initiatives, with the global drop in both CO2 emissions and levels of air pollution being one of few silver linings. It has been estimated that the world could now be on course for the biggest ever annual drop in greenhouse gas emissions. This presents what many see as an opportunity to accelerate the transition to a more sustainable future.

The European Green Deal, announced last December by the European Commission, is the ambitious plan for Europe to become carbon-neutral by 2050. Since the spread of the pandemic, a growing number of businesses and industry leaders are now calling for the themes of the Deal to be placed at the heart of the European recovery. Thus, the Deal could be a framework for tackling short-term economic needs with long-term sustainability goals. Executive Vice-President Frans Timmermans is leading the Commission's work on the European Green Deal and its first European Climate Law to enshrine the 2050 climate-neutrality target into EU Law. The European Green Deal provides a roadmap with actions to boost the efficient use of resources by moving to a clean, circular economy, and also aims to restore biodiversity and decrease pollution. It identifies the necessary investments and available financing tools and explains how to ensure a just and inclusive transition.

Circular Economy Action Plan

Despite 2020s unprecedented setbacks such as COVID-19, updated progress on the European Green Deal is being made, for example, the recent adoption of a new Circular Economy Action Plan. This provides a future-oriented agenda for a cleaner and more competitive Europe in cooperation with economic actors, consumers, citizens, and civil-society organizations. Aiming to accelerate the transformational change required by the European Green Deal, it will also build on the circular economy actions implemented in 2015/2016. A circular economy is essential for achieving the Green Deals' climate neutrality target and will reduce pressure on natural resources in Europe. This plan will ensure that the regulatory framework is streamlined and made fit for a sustainable future, the new opportunities from the transition are maximized, and the burden on people and businesses is minimized.

The plan presents a set of interrelated initiatives to establish a strong and coherent product policy framework that will lead to sustainable products, services, and business-models. It will be progressively rolled out, while further measures will be put in place to reduce waste and ensure that the EU has a well-functioning internal market for high-quality secondary raw materials. The EU's capacity to take responsibility for its waste will be also strengthened. Furthermore, this plan aims also at ensuring that the circular economy works for people, regions, and cities, fully contributes to climate neutrality, and harnesses the potential of research, innovation, and digitalization.

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Transition to Circular Economy

The transition towards a circular economy is an on-going procedure with frontrunner businesses, consumers and public authorities in Europe embracing this sustainable model. The Plan presents measures to make sustainable products the norm in the EU, empower consumers, and ensure less waste.

The Commission will launch concrete actions on the sectors that use the most resources and where the potential for circularity is high. Such actions include:

- Electronics and ICT: The “Circular Electronics Initiative” aiming at longer product lifetimes and improved collection and treatment of waste.
- Batteries and Vehicles: New regulatory framework for batteries for enhancing the sustainability and boosting the circular potential of batteries.
- Packaging and Plastics: New mandatory requirements on what is allowed on the EU market. Textiles: A new EU Strategy to strengthen competitiveness and innovation in the sector and boost the EU market for textile reuse.
- Construction and Buildings: Comprehensive Strategy for a Sustainably Built Environment promoting circularity principles for buildings.
- Food: New legislative initiative on reuse to substitute single-use packaging, tableware and cutlery by reusable products in food services.

These measures demonstrate the Commission’s resolve to ensure that the circular economy transition delivers opportunities for all, leaving no one behind. However, there are certain areas that have had to be put on hold amid efforts to contain the COVID-19 pandemic, such as COP26 (Conference of the Parties – the UN summit about Climate Change).

On April 1st, Timmermans made a statement announcing these plans will be postponed, and that COP26 will not take place as planned in November 2020. *“We acknowledge that global diplomatic activity is currently slowed down by the coronavirus crisis. And we understand that this decision is taken to avoid that COP26 would fail to meet expectations as a result of insufficient participation. This makes sense”*. However, he mentioned that the EU is just as committed to climate neutrality by 2050 than ever, still aiming to meet all climate and energy targets in place. *“As for the European Commission, we will not slow down our work domestically or internationally to prepare for an ambitious COP26, when it takes place”*. Overall, despite the announcement to postpone the COP26 and the COVID-19 pandemic, the Commission committed to delivering the European Green Deal in the interests of the health of economy and people.

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BVerfG Judgment regarding ECB's Public Sector Purchase Programme (PSPP)

For the first time in its history, the German Federal Constitutional Court declared a Judgment of the Court of Justice (C-493/17, Weiss and Others), and Decisions of the European Central Bank (ECB), *ultra vires* and not applicable in Germany (BVerfG, Judgment of the Second Senate of the 5th of May 2020 – 2 BvR 859/15).

The case stems from an action against German institutions, in the context of the ECB's Public Sector Purchase Programme (PSPP), an asset purchase programme launched in 2015 and still in force. The German Federal Constitutional Court referred the case to the Court of Justice questioning the validity of the ECB's Decisions. The German Federal Constitutional Court had doubts over the compatibility of the PSPP Decisions with the Treaty's prohibition on monetary finance and the principle of conferred powers.

Despite the Court of Justice's judgment confirming the legality of the ECB's Decisions, the German Federal Constitutional Court has today declared the Court of Justice's ruling to be arbitrary due to its lack of reasoning in its proportionality assessment and the poor standard of review employed. As a result, the German Constitutional Court has reviewed the validity of the ECB Decisions and came to the conclusion that the said Decisions also lack proper reasoning and must be amended to justify the programme. The Judgment is not immediately effective, and the German Federal Constitutional Court has granted the German Government and the Bundesbank three months to start negotiations that must ensure the enactment of a new ECB Decision.

The CJEU reacted on 8 May 2020 by restating its exclusive competence to declare if an EU institution violated EU law. The President of the European Commission stated on 10 May that "the final word on EU law is always spoken by the CJEU". The ECB on a press release issued on May 5, 2020 stated that "The ECB takes note of the German Federal Constitutional Court ruling and remains fully committed to doing everything necessary within its mandate to ensure that inflation rises to levels consistent with its medium-term aim and that the monetary policy action taken in pursuit of the objective of maintaining price stability is transmitted to all parts of the economy and to all jurisdictions of the euro area".



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