

NEWSLETTER

JANUARY 2021

HIGHLIGHTS

NOTE FROM THE EDITOR
M&A LAW FIRM'S PRACTICE HIGHLIGHTS
GREECE IN THE ENERGY SECTOR
EU IN THE ENERGY SECTOR
STATE AID



METAXAS & ASSOCIATES
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The year 2020 will be remembered for years to come as a time of unprecedented challenges, fast-moving variables with serious implications and unforeseen effects brought by COVID-19 pandemic. However, we at M&A Law Firm managed to remain fully active and business leaders in our core practice areas of Energy, EU Law, State Aid, and International Dispute Settlement. Practice and academic highlights of our Firm include:

- M&A Law Firm successfully represented electricity consumers before the Hellenic Council of State in the petition to annul regulatory constraints imposed on client switching in Greece. A development with far reaching impact in the Greek electricity supply market.
- M & A Law Firm advises a substantial number of foreign investor companies in the acquisition process of corporate vehicles and licenses in the field of Renewable Energy Sources in Greece M&A Law Firm successfully represents major industrial clients in the course of negotiation of their electricity and natural gas supply contracts M&A Law Firm represents an electricity supplier in an international arbitration proceeding
- Two new important scientific contributions of Prof. Dr. Antonis Metaxas, Managing Partner of M&A Law Firm, the first one in the field of EU Law under the title “The specific quality of the EU Legal Order – Inclusion, Crisis, State of Exception”, published by Sakkoulas Publications, the other one in the field of Energy Regulation and Arbitration in Europe titled “Energy Arbitration and Judicial Dispute Settlement”, published by Peter Lang Publishing.



Inside this first Issue for 2021, we present five significant topics amongst the latest developments in the European legal landscape:

- The Implementation of Electricity Target Model in the Greek Energy sector.
- The EU Strategy on Offshore Renewable Energy towards a Climate Neutral Europe.
- Belgium's request to the CJEU on the Future Interaction between a Modernized ECT and EU law.
- The EC decision on the approval of State guarantees for the financing of the LNG terminal in Cyprus.
- Revising energy disputes under the existing European Energy Law regime.

Thus, we would like to acknowledge those who have helped us shape and significantly expand our business. Warmest and heartiest thanks to our clients for their support and trust during this year, and we would like to wish you all a most healthy, fruitful and prosperous New Year 2021.



Conferences

M&A Law Firm was glad to sponsor and contribute to the distinguished 2nd Renewable & Storage Forum, hosted by Energypress.gr, that took place on November 12th 2020.

Prof. Dr. Antonis Metaxas participated as Chair in the panel with the CEOs of the institutional players of the Greek Energy Market (TSO, DSO, Hellenic Energy Exchange).



Successful court cases

M&A Law Firm successfully represented electricity consumers before the Hellenic Council of State in the Hellenic Council of State in the petition to annul regulatory constraints imposed on client switching in Greece. The successful representation of the Firm's clients before the Greek Council of State led to a significant regulatory reorientation of the Greek Electricity Supply Code as regards the substantial issue of client switching.



Publications

- The new scientific publication of **Prof. Dr. Antonis Metaxas** under the title "The specific quality of the EU Legal Order - Inclusion, Crisis, State of Exception" is published by Sakkoulas Publications. This monograph records the author's analysis on the specific quality of the EU legal order while focusing on its interplay with the national legal orders of the Member States. The goal of this scientific work is the analysis of the contemporary challenges for EU Law in the context of the multidimensional crises of the European integration process.
- A new international publication titled "Energy Arbitration and Judicial Dispute Settlement", edited by **Prof. Dr. Jochen Mohr** and **Prof. Dr. Antonis Metaxas**, is about to be published soon by Peter Lang Publishing. The book contains the proceedings of the 4th Athens Conference on European Energy Law, which was held in Athens on September 27, 2019. Authors include leading academics, senior judges and practitioners and in the field of Energy Regulation and Arbitration in Europe.
- **Maria-Konstantina Lili-Kokkori**, Associate at M&A Law Firm, published an article in European State Aid Law Quarterly Vol. 19, Issue 4/2020, Lexxion Publisher, Berlin, Germany) under the title "Latest State Aid Developments to Support the Greek Economy in the COVID-19 outbreak"..



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Implementing the Electricity Target Model

While EU Member States are committed to completing the internal market for electricity, the internal market requires removing barriers to trade and aligning markets. The Third Package creates a new regulatory framework to enable this and it is legally binding for markets to couple.

In compliance with that, the Electricity Target Model is the basis for the development of the single market in Europe and Greece was the only EU country that hadn't implemented a target model until recently. The implementation of the long-awaited Target Model, launched on 1 November 2020, as an important step towards the European Integration of the energy market with multiple benefits for participants and consumers.

It is anticipated that the implementation of the Target Model will lead to increased competition, greater transparency and an integrated market across the EU.



The EU Strategy on Offshore Renewable Energy towards a Climate Neutral Europe

The European Commission (EC), through its Green Deal diplomacy, trade policy and the EU's energy dialogues with partner countries, will support global uptake of these technologies. In order to meet the EU's goal of climate neutrality by 2050, the EC presented in November 2020 the EU Strategy on Offshore Renewable Energy.

The Strategy proposes to increase Europe's offshore wind capacity from its current level of 12 GW to at least 60 GW by 2030 and to 300 GW by 2050. The Commission aims to complement this with 40 GW of ocean energy and other emerging technologies such as floating wind and solar by 2050.

To promote the scale-up of offshore energy capacity, the EC will encourage cross-border cooperation between Member States on long term planning and deployment. This will require integrating offshore renewable energy development objectives in the National Maritime Spatial Plans which coastal states are due to submit to the Commission by March 2021.

The EC will also propose a framework under the revised TEN-E Regulation for long-term offshore grid planning, involving regulators and the Member States in each sea basin. The Commission estimates that investment of nearly €800 billion will be needed between now and 2050 to meet its proposed objectives.



To help generate and unleash this investment, the EC will provide a clear and supportive legal framework. To this end, the Commission clarified the electricity market rules in an accompanying Staff Working Document and will assess whether more specific and targeted rules are needed. The Commission will ensure that the revisions of the State Aid guidelines on energy and environmental protection and of the Renewable Energy Directive will facilitate cost-effective deployment of renewable offshore energy.

The Offshore Renewable Energy Strategy sets the highest deployment ambition for offshore wind turbines (both fixed-bottom and floating), where commercial activity is well advanced. In these sectors, Europe has already gained unrivalled technological, scientific and industrial experience and strong capacity already exists across the supply chain, from manufacturing to installation.

Thus, the Commission will regularly consult a community of experts from public authorities, stakeholders and scientists, in order to analyse and monitor the environmental, social and economic impacts of offshore renewable energy on the marine environment and the economic activities that depend on it.

While the Strategy underlines the opportunities across all of the EU's sea basins – the North Sea, the Baltic Sea, the Black Sea, the Mediterranean and the Atlantic – and for certain coastal and island communities, the benefits of these technologies are not limited to coastal regions.

The Strategy highlights a broad range of inland areas where manufacturing and research is already supporting offshore energy development.



Belgium Seeks CJEU's Opinion on the Future Interaction between a Modernised ECT and EU law

On 3 December 2020, Belgium announced the submission of a request to the Court of Justice of the European Union (CJEU) for an opinion on whether the intra-European application of the arbitration provisions of the future modernised Energy Charter Treaty (ECT) are compatible with the EU Treaties.

Belgium indicated that the purpose of its request is "to provide clarity and legal certainty" and that it puts the question to the Court "in a neutral manner", without taking a stand on the issue. Belgium indicated that the purpose of its request is to "provide clarity and legal certainty" and that it puts the question to the Court "in a neutral manner."

Strictly speaking, Belgium's request does not concern the current version of the ECT, but the future version of the treaty whose modernization process was initiated in November 2017 (while the negotiation rounds started in July 2020).

The opinion procedure under Article 218(11) of the Treaty on the Functioning of the European Union (TFEU) is a preventive mechanism that allows Member States to obtain the opinion of the CJEU as to whether an envisaged agreement is compatible with the Treaties. However, it does not allow for review of treaties already in force.

On 27 May 2020, the European Commission presented its own ECT modernization proposal, while stating that such proposal does not affect its position that the "ECT does not contain an investor-to-state arbitration mechanism applicable to investors from one EU Member State investing in another".



The Commission presents its proposal as having three main goals:

- Bringing the ECT's provisions on investment protection in line with those of agreements recently concluded by the EU and its Member States.
- Ensuring that ECT better reflects climate change and clean energy transition goals and facilitates a transition to a low-carbon, more digital and consumer-centric energy system, thus contributing to the objectives of the Paris Agreement and our decarbonization ambition.
- Reforming the ECT's investor-to-state dispute settlement mechanism in line with the EU's work in the ongoing multilateral reform process in the United Nations Commission on International Trade Law (UNCITRAL)".
- The Commission indicated on 2 December 2020 that if its core objectives are not attained within a reasonable timeframe, it may consider proposing other options, "including the withdrawal from the ECT".



EC approval on State guarantee for the financing of the LNG terminal in Cyprus

On 8 December 2020, the European Commission announced that it has decided to approve, under EU State Aid rules (Primary Legal Basis: Art. 107(3)(c) TFEU and Secondary Legal Basis: Environment and Energy - Guidelines on State aid for environmental protection and energy 2014-2020), a Cypriot measure to issue a state guarantee for securing loans to support the construction of a liquefied natural gas ('LNG') terminal at Vasilikos Bay, in Cyprus.

Cyprus is an isolated energy market with no interconnected generation capacity from other countries and with a high dependency on liquid fuels for power generation. The Commission found that the construction of the LNG terminal will contribute to market integration, as it will enable Cyprus to connect

with the Trans-European gas networks. The terminal will also improve Cyprus' security of energy supply and diversification of imported energy sources and fuels by increasing energy reliability and flexibility and by giving the country access to the global LNG market. Furthermore, the project should reduce emissions of carbon dioxide (CO₂), nitrogen oxides (NO_x) and sulfur oxides (SO_x) and dust particles emissions associated with power generation in Cyprus, which is traditionally using heavy fuels.

The importance of this project for the EU gas markets is recognized since the project was included twice in the EU list of Projects of Common Interest. The Commission also found that the State guarantee is necessary to obtain two loans amounting to €150 million

million from the European Investment Bank (EIB) and €80 million from the European Bank for Recovery and Development (EBRD). The Commission concluded that the measure is compatible with the internal market and, therefore, approved the State guarantee under EU State aid rules. More information will be available on the Commission's competition website, in the State Aid Register under the case number SA.55388. The public version of this decision will be displayed as soon as it has been cleansed of any confidential information.

The construction of the LNG terminal will contribute to market integration, as it will enable Cyprus to connect with the Trans-European gas networks.



Revising energy disputes under the existing European Energy Law regime

The number of disputes before the European Court of Justice that involve energy related constellations is growing and several recent judgements of the ECJ have implied a significant impact to the energy sector towards its interpretation and evolution.

The ruling in case **Austria v European Commission** (Case C-594/18P) touched upon the interaction between the Euratom Treaty and the TFEU. As the Euratom Treaty does not contain state aid rules, to what extent do the principles of the TFEU apply when it comes to determining the compatibility of state aid to the nuclear sector? In 2014 EC approved a state aid scheme in favor of the UK stating that it was compatible with EU state aid rules and the internal market. Austria launched an appeal to this decision on the basis that approval of this scheme contradicted the EU policy to support renewable energy.

Following the subsequent ruling in September 2020, the Court dismissed Austria's appeal and confirmed that the construction of the power plant may benefit from state aid rules, and thus, the absence of specific state aid rules in the Euratom Treaty, the state aid provisions of the TFEU are applicable to the nuclear energy sector. Furthermore, the ECJ held that state aid that contravenes environmental rules shall not be compatible with the internal market. Lastly, the ECJ confirmed the EC's interpretation for not taking into account the negative effects of the measures on the environmental principles. According to this ruling, each MS is free to determine the exploitation of its natural resources and the energy sources to use.



In **Achema and Lifosa v Commission** (Case T-300/19), two large consumers claimed the annulment of EC decision approving state aid in Lithuania and granting support to power plants producing electricity from renewable energy sources. Achema and Lifosa appealed the failure of EC to open a formal investigation for the compatibility of the support scheme alleging that EC denied them procedural rights and failed to take into consideration the effects of relevant levies applied to large consumers.

The **AXPO Trading v Gestor dei Servizi**

Energetici SpA – GSE (Case C-705/19) stated AXPO's failure to purchase green certificates for imported RES in Italy and addressed the compatibility of the Italian green certificate legislation with EU law. According to the ruling the obligation to buy green certificates which is imposed by the Italian State on importers of electricity,

and the issue of those certificates free of charge to national producers of electricity generated from renewable sources do not amount to the transfer of State resources within the meaning of Article 107(1) TFEU.



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