



NEWSLETTER MARCH 2022



**NOTE FROM THE EDITOR
M&A LAW FIRM'S PRACTICE
HIGHLIGHTS**

**COMPETITION LAW
ENERGY & STATE AID**

EU CASE-LAW

**“THE LAW FIRM THAT SHAPES
THE ENERGY MARKET,”**

Metaxas & Associates Law Firm enters the New Year with a number of new important Mandates: a Multinational active in offshore wind parks, a leading energy company – pioneer in the Biodiesel market & a foreign Multinational engaged in the takeover of a 150 MW combined portfolio consisting of Wind Park and PV licenses that are currently under development. Keep on reading to find out more about:

- Upcoming Energy Conferences that you shouldn't miss
- Our Practice Highlights
- Competition Law – Law n.4886/2022: Modernization of Greek Competition Law
- Energy Law and State Aid
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 - New Climate Energy and Environmental Aid Guidelines (CEEAG)
- EU Case-Law
 - The Commission does not have to re-open the formal investigation procedure after previous decision is annulled (Case T-757/18: Loutraki Kazino v European Commission)
 - Recovery of incompatible State aid (Case C-51/20, European Commission v Greece)



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M&A's LAW FIRM PRACTICE HIGHLIGHTS

CONFERENCES

- **5th Athens Conference on EU Energy Law and Policy: Current Trends in Energy Transition**

Metaxas & Associates Law Firm participated in the distinguished 5th Athens Conference on EU Energy Law and Policy: Current Trends in Energy Transition, organized by the **Hellenic Energy Regulation Institute (HERI)**, that took place virtually on December 10th, 2021. Following the successful event many of the scientific contributions presented by leading academics and practitioners in the fields of EU and Energy Law, will be published in a **special issue** of the **Journal of World Energy Law and Business (JWELB)**, an interdisciplinary leading scientific Journal published by Oxford University Press.

- **Power & Gas Supply Forum: March 30, 2022**

M&A Law Firm will participate in the 3d Power & Gas Supply Forum, organized by **EnergyPress.gr** that will take place on Wednesday, March 30th, 2022. The Conference will mainly focus on the ongoing energy price crisis and its repercussions in the national and international energy market.



- **RENEWABLE Greece 2022 conference: April 14-15, 2022**

M&A Law Firm will also participate in the upcoming Renewable Greece Conference, organized under the auspices of the **Hellenic Wind Energy Association (ELETAEN)** and the **Hellenic Association of Photovoltaic Energy Producers (SPEF)** and in cooperation with **Sustainability for Students**, that will take place on 14-15 April 2022 in Athens. Renewable Greece is an internationally recognized high-profile conference gathering all professionals involved in the development of the wind and solar industry in the country, from key decision-makers to service companies.



PRACTICE HIGHLIGHTS



- A leading energy company active in the Biodiesel market, granted Metaxas & Associates Law Firm the Mandate to provide legal consulting and guidance on complex regulatory issues regarding biogas' production costs.
- M&A Law Firm received the Mandate to act as legal and regulatory advisor for a foreign multinational investor and developer in offshore wind parks, a submarket in the broader field of Renewables that is expected to substantially develop this year in Greece.
- Metaxas & Associates successfully represented its client, a **leading Greek electricity supplier**, in its **dispute** on substantial regulatory issues with the Hellenic Electricity Distribution Network Operator S.A. before the Greek Regulatory Authority for Energy (RAE) in respect of the provision of public service obligations.



Law n.4886/2022: Modernization of Greek Competition Law

The Greek Competition Law n. 3959/2011 (the Law) has been extensively amended by Law n. 4886/2022 “Modernization of Competition Law for the Digital Era”, issued on January 24th, 2022. The Law 4886/2022 (GG A’ 12/24.01.2022) transposes into Greek national law the Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market.

The most notable amendments of Law n. 3959/2011 refer to the introduction of one completely new substantive prohibitive provision, and various insightfully ambitious procedural amendments and novelties on the merger control regime, the operation, powers vested and examination of cases before the HCC, the imposition and immunity from fines, the undertaking of commitments, the cooperation with other NCAs, the settlement procedure, the leniency program, the non-enforcement letter and the conduct of modern sectoral or agreement tailored investigations.

ENERGY & STATE AID

Commission approves Greek measures to support construction and operation of pumped hydroelectric storage facility

On 20 December 2021, the European Commission has approved, under EU State aid rules, a Greek measure to support the construction and operation of a pumped hydroelectricity storage facility in Amfilochia, Greece. The measure will be partly funded by the Recovery and Resilience Facility (“RRF”), following the Commission’s positive assessment of the Greek Recovery and Resilience Plan and its adoption by Council.

The aid will take the form of a €250 million investment grant and of an annual support – financed from a levy on electricity suppliers – to complement market revenues, in order to reach an acceptable rate of return on the investment. The supported storage facility will have a capacity of 680 Megawatts (MW) and will be directly connected to high-voltage transmission lines. By supporting the operation of existing renewable energy units as well as by enabling the introduction of new ones, the project will contribute to a smooth and effective transition to clean renewable energy of the Greek power system, in line with the decarbonisation target of the European Green Deal.

The Commission assessed the measure under EU State aid rules, in particular Article 107(3)(c) of the Treaty on the Functioning of the European Union, which enables EU countries to support the development of certain economic activities subject to certain conditions, and the Guidelines on State Aid on environmental protection and energy. The Commission also took into account the inclusion of the project in the list of European Projects of Common Interest in the Energy Sector. The Commission therefore concluded that the positive effects of the measure outweigh any potential distortion of competition and trade brought about by the support. On this basis, the Commission approved the measure under EU State aid rules.

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New Climate Energy and Environmental Aid Guidelines (CEEAG)

The European Commission (the "Commission") formally adopted on 27 January 2022 its new Guidelines on State aid for climate, environmental protection and energy (CEEAG). The CEEAG replace the guidelines that were in force since 2014 (EEAG) and integrate the new objectives of the EU Green Deal of a reduction of 55% net greenhouse gas emissions compared to the 1990 levels by 2030 and of carbon neutrality by 2050. The Commission has estimated that achieving the new 2030 target would require EUR 390 billion of additional annual investment compared to the levels in 2011-2020, an investment that cannot be borne by the private sector alone, and would therefore require public investments.

In particular, the CEEAG:

- **Broaden the categories of investments and technologies that Member States can support** to cover all technologies that can deliver the European Green Deal. The revised rules generally allow for aid amounts up to 100% of the funding gap, especially where aid is granted following a competitive bidding process, and introduce new aid instruments, such as Carbon Contracts for Difference to help Member States respond to the greening needs of industry.
- **Cover aid for numerous areas relevant for the Green Deal. This includes new or updated sections on aid for the prevention or reduction of pollution** other than due to greenhouse gases, including noise pollution, aid for resource efficiency and circular economy, aid for biodiversity and for the remediation of environmental damage. Moreover, the CEEAG feature dedicated sections for aid incentivising investments in flagship areas such as **energy performance of buildings, and clean mobility**, covering all transport modes.

- Introduce changes to the current rules on **reductions on certain electricity levies for energy intensive users.**
- **Introduce safeguards to ensure that the aid is effectively directed where it is necessary** to improve climate and environmental protection, is limited to what is needed to achieve the environmental goals and does not distort competition or the integrity of the Single Market.
- **Ensure coherence with the relevant EU legislation and policies** in the environmental and energy fields, by, among others, ending subsidies for the most polluting fossil fuels, for which a positive assessment by the Commission under State aid rules is unlikely in light of their important negative environmental effects.
- **Increase flexibility and streamline the previous rules**, also by eliminating the requirement for individual notifications of large green projects within aid schemes previously approved by the Commission.

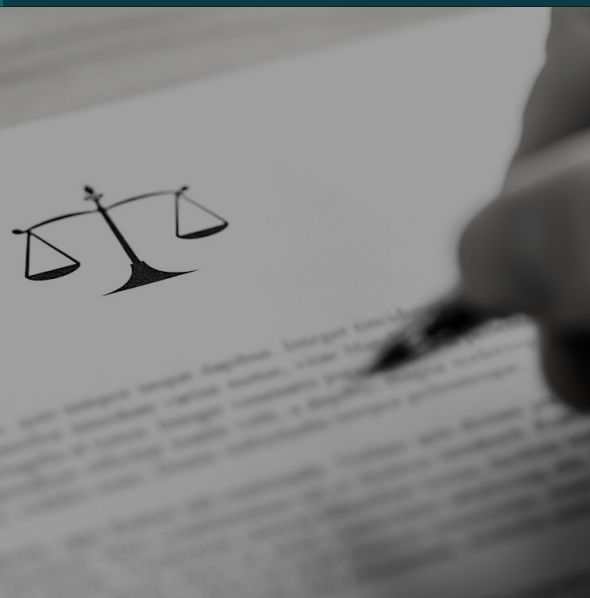
The Commission does not have to re-open the formal investigation procedure after previous decision is annulled (Case T-757/18: Loutraki Kazino v European Commission)

On 19 January 2022, the General Court ruled in case T-757/18, Loutraki Kazino v European Commission, that the Commission was not obliged to open the formal investigation procedure in order to correct a previous decision that was annulled by the General Court. Loutraki Kazino, a Greek casino, sought annulment of Commission decision 2018/1575 which found that system of fees on admissions to casinos in Greece that existed until November 2012 did not constitute aid. What is interesting is that the Commission adopted decision 2018/1575 without opening the formal investigation procedure. Normally a formal decision is preceded by a formal investigation whereby interested parties have the opportunity to submit their comments.

The General Court ruled that the Commission was in no way required to initiate a new formal investigation procedure after the annulment of the 2011 final decision, given that a formal investigation procedure relating to all the questions at issue had already been initiated in 2010 and that that procedure was not covered by the grounds of the judgment of 11 September 2014, Greece v Commission (T425/11, EU:T:2014:768).

Moreover, there is nothing in the 2017 complaint to suggest that the attractiveness advantage referred to is different from that mentioned in the 2009 complaint, which was the subject of the 2010 opening decision, and in relation to which the applicant had submitted its comments even before the 2011 final decision."

Investigation of the "attractiveness advantage"?



The applicant argued that the Commission had to reopen the formal investigation procedure because the 2014 judgment did not examine the existence of an “attractiveness advantage”. In response, the General Court, first, noted that no provision of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 [TFEU] (OJ 2015 L 248, p.9) specifies the cases in which the Commission is obliged to reopen the formal investigation procedure.”

According to the case-law, in order to comply with its obligations under Article 266 TFEU and conduct the new analysis required by the Court in a judgment annulling a measure, the Commission may, depending on the circumstances of the case, be compelled to reopen the formal investigation procedure, first, in order to gather the information necessary for that new analysis and, second, to give interested third parties the opportunity to put forward their arguments on that new analysis”.

In that regard, it must be recalled that it is in no way apparent from the case-law that annulment on the grounds of errors of law or manifest errors of assessment, and not on the ground of a failure to state reasons, necessarily entails reopening the formal investigation procedure. The case-law does not make the possibility of not resuming the entire procedure preceding the adoption of a measure adopted to replace another conditional on the latter having been annulled for procedural defects”.

Recovery of incompatible State aid (Case C-51/20, European Commission v Greece)

In March 2013, the Commission initiated a formal investigation procedure in respect of various amounts of aid granted by Greece to Larco, in particular State guarantees granted for the years 2008, 2010 and 2011, as well as a capital increase in 2009. In March 2014, the Commission decided that that aid was unlawful and incompatible with the internal market and was to be recovered. In the interim, Greece had informed the Commission of its intention to sell certain assets of Larco through two separate calls for tender. Following the two tendering procedures and irrespective of their outcomes, Larco would be put in bankruptcy in accordance with national legislation, and its remaining assets would be sold as part of the liquidation procedure. The Commission considered, first, that that sale did not constitute State aid and, second, that the recovery of the State aid in question would not be transferred to the new owners of those assets.

Taking the view that Greece had failed to comply with its obligations pursuant to the 2014 Decision, in 2016 the Commission brought an initial action before the Court of Justice against that Member State for failure to fulfil obligations. By judgment of 9 November 2017, the Court declared that Greece had failed to fulfil its obligations to recover unlawful and incompatible State aid. Considering that Greece had still not complied with that judgment, the Commission brought the present action for failure to fulfil obligations on 29 January 2020. In this second action, it requested that the Court order that Member State to pay a lump sum and a periodic penalty payment.

In February 2020, on account of Larco’s financial difficulties, Greece then made provision for that undertaking to be put under special administration. According to the Commission, Greece adopted measures with a view to recovering the State aid in question only after 29 January 2020, the date on which the Commission brought the second action for failure to fulfil obligations. Furthermore, in the Commission’s view, the failure continued up to the time of the Court’s examination of the facts.

By this judgment, the Court finds, first, that Greece failed to fulfil its obligations to take all necessary measures to comply with the 2017 judgment as at 25 March 2019 (expiry of the time limit prescribed by the Commission in its letter of formal notice) and, second, that the failure continued up to the Court’s examination of the facts.

In those circumstances, the Court orders Greece to pay to the European Union budget a lump sum of €5.500.000 and a penalty payment of €4.368.000 per six months’ delay in applying the measures necessary to comply with the 2017 judgment, as from.

Our law firm will continue monitoring the developments and keep you updated.



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