

METAXAS & ASSOCIATES
LAW FIRM



NEWSLETTER SUMMER 2022



**NOTE FROM THE EDITOR
PRACTICE HIGHLIGHTS**

**ENERGY CONFERENCES
ENERGY LAW AND
STATE AID**

EU CASE-LAW

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

Quite a number of notable mandates have been appointed to our Law firm during the last term, as well as stirring highlights and conferences. Keep on reading to find out more.

Our Law firm is pleased to declare that two of its members, Managing Partner Prof. Dr. Metaxas and Senior Associate Ms. Vassiliki Koumpli, have been selected and appointed by the European Commission in its panel of Arbitrators and TSD experts in bilateral disputes under EU trade agreements with third countries.

Our Managing partner, Professor Metaxas, has been appointed General Secretary of the prominent newly established «Association of Scientists of European Studies» which aims to focus on the representation of scientists involved in the monitoring, critical evaluation and promotion of the process of European integration from a legal, institutional and generally interdisciplinary perspective. As a founding Member and General Secretary, Prof. Metaxas invites fellow leading academics to join in (<https://euscientists.eu/>)

Metaxas & Associates Law Firm participates in the prominent upcoming annual "26th Government Roundtable" of the Economist, on the 5th -7th July. Prof. Dr. Antonis Metaxas, Managing Partner of Metaxas & Associates Law Firm and Chairman of the Hellenic Energy Regulation Institute is invited to participate in the panel discussion with, among others, the Ministers of Energy of Greece, Romania, and Israel.

LATEST NEWS

“ Hellenic Association of Energy Suppliers assigned Metaxas & Associates Law Firm the mandate to draft a Legal Opinion regarding the scientific evaluation of adjustment clauses in energy supply contracts in light of the relevant legal and regulatory framework. Metaxas & Associates received this mandate to give its legal advice on perhaps the most debated issue nowadays in the Greek Energy sector given the Firm's high expertise and academic excellence in the field of energy law. ”

PRACTICE HIGHLIGHTS

Metaxas & Associates Law Firm has been ranked as “Top-Tier Law Firm” for the year 2022 by the renowned legal directory “LEGAL 500” in both practice areas of Energy Law and EU and Competition Law.

For a fifth consecutive year, our Firm has been ranked on the top position of the prestigious Legal 500 Europe, Middle East and Africa (EMEA) rankings, which was announced on April 11, 2022. Managing Partner, Prof. Dr. Antonis Metaxas, is ranked as “Leading Individual” both in Energy and EU/Competition Law, while Partner Stathis Kakounis is ranked as “Next Generation Partner” in Energy Law, while other team members are also recognized as “Key Lawyers”.

EStAL EUROPEAN
STATE AID
LAW 
QUARTERLY

Metaxas & Associates Law Firm has been ranked as “Leading Law Firm” for the year 2022 by the renowned legal directory “Chambers & Partners” in both practice areas of Energy Law and EU and Competition Law

According to Chambers Europe 2022 Guide, Prof. Dr. Antonis Metaxas, Managing Partner of Metaxas & Associates Law Firm, has been ranked for yet another year as a top lawyer in the Energy Law, “maintaining his market-leading reputation in the energy space, with experience assisting with EU law issues and expertise in energy regulation”.



“Athens Energy Dialogues” Conference

Prof. Dr. Antonis Metaxas, Managing Partner at Metaxas & Associates Law Firm, Chairman of the Hellenic Energy Regulation Institute, participated in the “Athens Energy Dialogues” Conference, which took place on 26 & 27 May 2022 in Athens. Prof. Metaxas moderated the panel ‘Lignite Vs Decarbonization: The impact on the industrial sector’, focusing on the challenges of decarbonization. Among the distinguished speakers of the panel were Mr. Nikos Papathanasis, Alternate Minister of Development & Investments, Mr. Sokratis Famellos, Former Alternate Minister for Energy and Environment, Mr. Athanassios Savvakis, Chairman of the Energy Exchange Group, and Mr. Philipp Kunze, Managing Director of BayWa r.e.

6th Energy Commodities Trading Conference

Prof. Dr. Antonis Metaxas participated as speaker in the 6th Energy Commodities Trading Conference, which took place on 11 May 2022. His speech focused on the ongoing EU energy crisis and the legal and regulatory aspects of state intervention. .

Greek Bar Association’s event regarding the Adjustment Clauses in Electricity Supply Contracts

On 27 April 2022, Prof. Dr. Antonis Metaxas participated as a speaker in the scientific event hosted by the Plenary of Greek Bar Associations regarding the Adjustment Clauses in Electricity Supply Contracts and the legal and regulatory issues arising thereof due to the extensive use by electricity suppliers owed to the economic crisis

Power & Gas Supply FORUM

Metaxas & Associates Law Firm happily sponsored and participated in the 3rd Power & Gas Forum hosted by Energypress.gr, which took place on 30 & 31 March 2022. The Conference mainly focused on the ongoing energy price crisis and its repercussions on the national and international energy market.

Prof. Dr. Antonis Metaxas chaired the Conference session: “The architecture of the new energy system: New National Energy and Climate Plan, energy mix, decarbonization, PPAs and the key role of Renewable Energy Sources”.

Renewable Greece 2022

Prof. Dr. Antonis Metaxas moderated the first Panel titled “Renewable Energy Development Policy – Propelling Greece into Decarbonized Future”, hosted by The Voice of Renewables. Mr. Kostas Skrekas, Minister of Environment and Energy, Mr. Athanasios Dagoumas, President, Regulatory Authority for Energy (RAE), Mr. Panagiotis Papastamatiou, CEO of Hellenic Wind Energy Association HWEA / ELETAEN and Mr. Yiannis Yiarentis, CEO, Chairman of the Board, Renewable Energy Sources Operator & Guarantees of Origin (DAPEEP SA), participated as speakers and engaged in a very constructive dialogue as regards the green transition and the national decarbonization plan.

ECPE Project International Conference

Vassiliki Koumpli, Senior Associate at our Law Firm, participated as speaker in the distinguished international conference «Prosumerism and Energy Communities as a Future Perspective», part of the ECPE Project, which took place on 3 March 2022 in Brussels. Her speech focused on the importance of effective ADR mechanisms for resolving disputes in which energy prosumers are involved for customer protection and the improvement of market performance.

ENERGY LAW AND STATE AID

Boosting renewable energy investments and the critical regulations of the new Development Law

- On 2 February 2022, the Hellenic Parliament adopted a new Development Law proposed by the Ministry of Development & Investments (Law 4887/2022, Government Gazette A 16/04.02.2022). The new legal framework aims at promoting the economic development of the country by incentivizing international businesses and individuals to invest in specific activities and sectors, in order to achieve the following goals: a) digital and technological transformation of enterprises; b) green transition; c) creation of economies of scale; d) support of innovative investments and investments seeking the introduction of new technologies, robotics and of AI; e) the strengthening of employment with specialized personnel, f) the further enhancement of tourism; f) improvement of competitiveness in high value-added sectors etc. The new Development Law introduces a state aid scheme, which includes: a) tax exemptions; b) cash grants; c) leasing subsidies; d) subsidies for employment costs; and e) financing of business risk, on the basis of the EU General Block Exemption Regulation (GBER) 651/2014 (L 187/1 26-6-2014). With regard to Green Transition, in particular, purpose of the scheme is to support investment plans related to activities in the circular economy and sustainable development as well as to adopt technologies that contribute to the protection of the environment and the upgrade of energy efficiency through business units. In terms of 'Just Transition', purpose of the scheme is to support investment plans carried out in the areas of the Territorial Just Transition Plans accompanying the Just Development Transition Program. The scheme also aims at enabling these areas to address the socioeconomic, employment, and environmental impacts of the transition towards a climate-neutral and green economy, which will be achieved through a balanced and sustainable development.

The first National Climate Law

On 26 May 2022, the Hellenic Parliament adopted the first National Climate Law proposed by the Ministry of Environment and Energy (Law 4936/2022, Government Gazette A 105/27.05.2022). The National Climate Law aims at reducing greenhouse gas emissions levels by approximately 55% by 2030 and by 80% by 2040 before achieving zero-net emissions by 2050, in accordance with the European Union policy towards climate neutrality and a secured energy transition. Moreover, as part of an additional package worth 3.2 billion euros, the National Climate Law provides for the public subsidy of a big part of the increases that households bore in their power bills from December 2021 until the end of May 2022.

**Judgment of the General Court of 16 March 2022 — MEKH and FGSZ v ACER
(Joined Cases T-684/19 and T-704/19)**

The applicant in Case T 684/19, Magyar Energetikai és Közmű-szabályozási Hivatal ('MEKH'), is a central government body, which operates as the Hungarian energy market regulator. The applicant in Case T 704/19, Földgázszállító Zártkörűen Működő Részvénytársaság (FGSZ), is the owner and operator of the Hungarian high-pressure natural gas pipeline system transmitting gas to neighbouring transmission system operators, distribution companies, power plants and large industrial consumers. In 2015, FGSZ and the Bulgarian, Romanian and Austrian transmission system operators engaged in a regional cooperation project intended to increase energy independency by bringing Black Sea Gas to markets. That project, namely 'the ROHUAT project', provide incremental capacity expansion at two interconnection points: from Romania to Hungary ('ROHU') and from Hungary to Austria ('HUAT'). In 2017 the project was divided into two separate projects. Later that year FGSZ and GCA (Gas Connect Austrian GmbH) conducted a joint public consultation on the draft project proposal, in accordance with Article 27(3) of Regulation 2017/459. On 6 April 2018, FGSZ submitted its HUAT project proposal for incremental capacity to the Hungarian Regulatory Authority (MEKH). On 9 April 2018 GCA submitted its HUAT project proposal for approval to the national regulatory authority, namely 'E-Control', and later that month E-Control approved the HUAT project proposal. On 5 October 2018, MEKH rejected the incremental capacity proposal of the HUAT project.

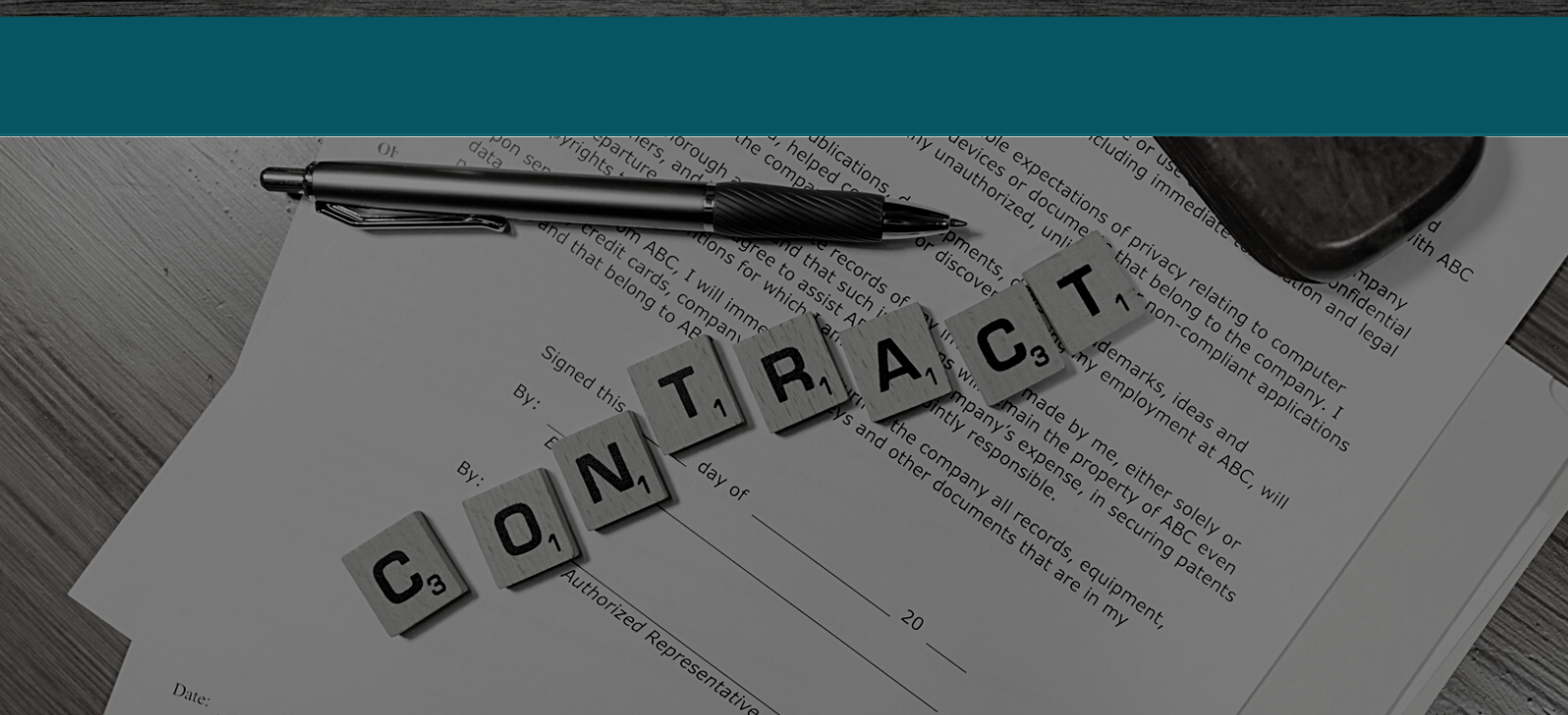
On 10 October 2018, ACER told the Hungarian and Austrian regulatory authorities that it had noted that a coordinated decision had not been taken within sixth months of receipt of the HUAT project proposal by the Austrian national regulatory authority. ACER therefore informed them that, pursuant to Article 8(1) of Regulation No 713/2009, it was entitled to decide on the HUAT project proposal.

On 9 April 2019, ACER adopted Decision No 05/2019 ('the Agency's decision') approving the delivery of the HUAT project for offer levels I and II.

On 6 and 7 June 2019, MEKH and FGSZ each submitted their appeal against the Agency's decision before the Board of Appeal of ACER, in accordance with Article 19 Regulation No 713/2009. By a decision of 6 August 2019 ('the Board of Appeal's decision'), the Board of Appeal of ACER dismissed the appeals brought against the Agency's decision and upheld that decision.

The case reached the EGC, which:

1. declared the action brought by MEKH inadmissible so far as it concerns Decision No 05/2019 of the European Union Agency for the Cooperation of Energy Regulators (ACER) of 9 April 2019;
2. annulled Decision No A-004-2019 of the Board of Appeal of ACER of 6 August 2019;
3. ordered ACER to bear its own costs and to pay those incurred by MEKH and FGSZ;
4. ordered the European Commission and E-Control to bear their own costs.



The new Micula CJEU judgment: European Commission v European Food SA and Others (Case C-638/19 P)

In the 1990s, the Micula brothers, originated from Romania but having Swedish nationality had invested millions in Romania in various food processing and packaging factories. Due to Romania's low economic development, the Miculas benefitted from a tax incentives scheme in support of their investment. In 2005, Romania repealed the tax incentives scheme. By doing so, Romania had breached its obligation to ensure fair and equitable treatment of all investments in accordance with the Bilateral Investment Treaty (BIT) between Sweden and Romania (signed in 2002). As a result, the Miculas initiated ICSID arbitration proceedings and in 2013 they obtained an award of €178 million as compensation for the repeal of the tax incentives scheme. In accordance with the ICSID Convention and on the basis of the self-contained regime of ICSID, the Miculas proceeded in the recognition and enforcement of the award. Consequently, as required by the ICSID Convention, Romania paid the compensation awarded by the arbitral tribunal in spite of the Commission's warnings that the payment of the award would constitute some form of state aid, which is incompatible with EU law. Indeed, by decision of 30 March 2015 the Commission classified the payment of that compensation as state aid incompatible with the internal market, prohibited its implementation and ordered Romania to recover the sums already paid. As a result of that decision, the Miculas successfully initiated annulment proceedings against the decision of the European Commission. The EGC ruled that the European Commission had retroactively exercised its competences to facts pre-dating the accession of Romania to the European Union on 1 January 2007.

The European Commission appealed against the EGC's judgment before the CJEU. Contrary to the EGC, the CJEU ruled that the state aid must be regarded as being granted, within the meaning of Article 107(1) TFEU, on the date on which the right to receive it is conferred on the beneficiary under the applicable national legislation.

Specifically, the CJEU:

1. set aside the judgment of the General Court of the European Union of 18 June 2019, *European Food and Others v Commission* (T-624/15, T-694/15 and T-704/15, EU:T:2019:423);
2. declared that there is no need to adjudicate on the cross-appeal;
3. referred the case back to the General Court of the European Union for it to adjudicate on the pleas and arguments raised before it on which the Court of Justice of the European Union has not given a ruling;
4. reserved the costs.





METAXAS & ASSOCIATES
LAW FIRM

M & A LAW FIRM
154 ASKLIPIOU STR.
11471, ATHENS, GREECE
TEL. + 30 210 33 90 748
FAX + 30 210 33 90 749



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