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Oil Regulation

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Contributing editor: Ron Deyholos

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Greece

Yannis Kelemenis

Kelemenis & Co

General

- 1 Describe, in general terms, the key commercial aspects of the oil sector in your country.

Even though Greece is considered to have high oil potential, it remains one of the most unexplored countries in the Mediterranean region. Today there are only three proven oil deposits in Greece with a total of less than 2 million tons (Mt) in proven reserves: the Prinos and north Prinos deposits and the oil content of the Katakolo deposit in the Peloponnese. There are four refineries, whose total capacity (0.41 million barrels per day since 1990) makes Greece under-equipped in view of its needs. Two of these refineries are controlled by Hellenic Petroleum SA, a listed joint-stock company in which the Greek state still holds a majority stake; one refinery is owned by Petrola Hellas, which is controlled by the Latsis group; and the fourth is owned by Motor Oil Hellas. Three of the four refineries are situated close to the Athens region and one is situated in Thessaloniki, in the north of Greece.

The much-awaited oil pipeline connecting Bourgas (in south-eastern Bulgaria) and Alexandroupolis (in north-eastern Greece), which will import oil from Russia and the Caspian Sea, has entered its construction phase. The new pipeline will have a length of 280km and a capacity that may reach 600,000 barrels per day. Since June 2002, a pipeline of 230km with a capacity of 2.5Mt per year has started operation, transporting oil from Thessaloniki to Macedonia and Kosovo.

The retail market is made up of about 25 wholesalers, of which three (ie, BP, EKO and Shell) account for about 50 per cent of the market. Greece has approximately 8,000 service stations, which make it, by some margin, the EU leader in service stations per capita.

- 2 What percentage of your country's energy needs is covered, directly or indirectly, by oil as opposed to gas, electricity, nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production? What are your country's energy demand and supply trends, especially as they affect crude oil usage?

The share of oil in total energy consumption has been stable (around 60 per cent). Gas has penetrated quickly, now accounting for more than 10 per cent of needs, compared with only 0.1 per cent in 1994. Lignite accounts for 29 per cent of the country's needs while the contribution of biomass remains low at 3 per cent. Until 2008, total energy consumption had been increasing relatively rapidly at a rate of 2.2 per cent on average per year since 1990; in the past two years, however, it has decreased. The share of oil in total consumption has been stable at around 70 per cent. Consumption of oil products has increased from about 13Mt in 1990 to nearly 18Mt today. In terms of oil consumption by sector, about 43 per cent is consumed by the transport sector, 25 per cent by the tertiary and residential sectors, 16 per cent by industry and 11 per cent by power plants.

The contribution of domestic production to the country's hydrocarbon needs has remained infinitesimal and today is less than 1 per cent. Of the approximately 380,000 barrels consumed in Greece daily, only 2,000 came from domestic production, namely, the Prinos field. Regarding crude oil imports, 50 per cent come from Russia, 25 per cent from Saudi Arabia and 13 per cent from Iran. In the near future, efforts will continue towards the greater penetration of natural gas and a reduction of the country's dependence on oil and lignite.

- 3 Does your country have an overarching policy regarding oil-related activities or a general energy policy?

Supervision of the oil market and the market for oil products is shared between the Ministry of Development and the Regulatory Authority for Energy (RAE). Nonetheless, the Ministry of Development has the final word on most regulatory matters, whereas RAE has primarily an advisory role. There is neither an overarching policy regarding oil-related activities nor a general energy policy into which the oil market fits. Policy is mostly the outcome of piecemeal decisions rather than of a coherent long-term strategy.

Regulation overview

- 4 Describe the key laws and regulations that make up the general legal framework regulating oil activities?

Statute 2289/1995 (Prospecting, Exploration and Exploitation of Hydrocarbons, the Hydrocarbons Law) is the primary law regulating oil activities in Greece that relate to the prospecting, exploration and exploitation of hydrocarbons. In summer 2002, Parliament passed Statute 3054/2002 (Organisation of the Oil Products Market, the Oil Products Law), which resulted in a complete restructuring of the oil products market. The Oil Products Law was subsequently amended by Statute 3335/2005 (Monitoring of the Trade and Storage of Oil and Oil Products). On 7 September 2005, the minister of development issued, pursuant to articles 4 and 14 of the Oil Products Law and following RAE's opinion, a new licence code for the oil products market (the Licence Code). The provisions of the Licence Code are applicable to the issue of distillation licences, licences for the supply of biofuels, trade licences, retail licences, licences for pipeline transportation and bottling licences.

- 5 Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil activities.

The state grants rights of exploration, development and production of oil through the minister of development. The Ministry of Development is the body granting licences for distillation, supply of biofuels, wholesale trade, and transport of oil and oil products via a pipeline. Licences for the retail trade and the bottling of LPG are granted by local authorities (ie, prefectures).

RAE is an independent administrative authority that has primarily an advisory and consulting role over the sector (see question 3). RAE monitors the entire energy market and provides advisory services to the minister of development and other authorities.

The Department for the Inspection of Supply and Storage of Oil operates under the Ministry of Development. A special supervisory team known as KEDAK operates under the above-mentioned department and deals with matters such as in situ inspections of installations and refineries, storage facilities and means of transportation.

Pursuant to article 14 of Presidential Decree 118/2006 (Terms for the Operation of Service Stations), the local prefectures and their directorates for transportation are responsible for the granting of operating licences to service stations.

6 How does your country manage appeals of government regulatory decisions?

Decisions of the Ministry of Development imposing administrative sanctions and fines in relation to activities stipulated in the Oil Products Law are subject to a petition before the competent administrative court of first instance; such petitions are heard by this court within four months of their filing.

Under the Licence Code, decisions of the Ministry of Development concerning the granting of licences are subject to a petition within 30 days of their publication. Such petitions are filed with the minister of development, who has to decide within 60 days of the filing date.

The judicial review of the Ministry's decisions is usually vested with the Council of State – the supreme administrative court in the country. Applications need to be filed within 60 days of the publication or the service of the decision.

7 What standards are employed for oil measurement and oil facility equipment? Are these voluntary or involuntary? Are they established by a government body?

Pursuant to Ministerial Decision 846/1986, all domestic oil measurement instruments need to be approved by the Department of Measurements and Weights operating under the former Ministry for Trade, which has now become the Ministry of Development. Consideration for approval requires that a full application dossier setting out such matters as the functions, construction, shape, use, materials and size of these instruments be first filed with this department.

Anyone who imports oil measurement instruments must also file an application for approval to the Department of Measurements and Weights before supplying them into the Greek market. This application must contain a copy of the approval for the imported instrument from the competent authority of the manufacturing country, including certified drawings of the instruments and technical specifications manuals. Applications regarding instruments whose supply has already been approved elsewhere in the EU need only include the approval certification.

Standards relating to oil measurement are involuntary and are specified, together with the process of granting an approval, in ministerial decisions of the minister of development published in the Government Gazette.

In accordance with the Hydrocarbons Law (article 6), the licence for the installation of facilities for the prospecting, exploration and exploitation of hydrocarbons is granted by the minister of development. The ministers of national defence and the merchant marine grant licences for offshore installations. Pursuant to the Licence Code (articles 19 and 20), the holders of refinery and trade licences must have facilities suitable for the storage of oil and oil products.

Presidential Decree 118/2006 (Terms for the Operation of Service Stations) sets out the standards for oil facility equipment necessary for the operation of service stations and particularly for surface and subsurface tanks, the sewage collection system, elevatory machinery,

automatic washing facilities, air compressors and electronic systems for the management of fuels.

8 What government body maintains oil production, export and import statistics?

The National Authority of Statistics (ESY) is the designated body for the compilation of statistics for all energy sub-sectors in Greece. However, compilations are done on an irregular basis and frustrating delays and gaps are quite frequent. In practice, it is the Ministry of Development in association with Hellenic Petroleum SA that occasionally issue statistical information about oil production, exports and imports.

Natural resources

9 Who holds title over oil reservoirs? To what extent are mineral rights on private and public lands involved? Is there a legal distinction between surface rights and subsurface mineral rights?

Under the Hydrocarbons Law and Statute 367/1976 (Expropriation of Properties for Oil Exploration), the state has the right of research, exploration and production for all oil reservoirs within the Greek territory, whether onshore or offshore. When those reservoirs are on private lands, the state has the right to expropriate such properties for the needs of exploration and production of oil. The Hydrocarbons Law (article 12) provides that both surface and subsurface mineral rights on private properties may be expropriated for such purposes.

10 What is the general character of oil exploration and production activity conducted in your country? Are areas off-limits to exploration and production?

The Greek territory is divided into areas for prospecting and exploring hydrocarbon deposits. Terms, conditions and criteria for the selection of areas are defined in Ministerial Decision 12,657/1995, which is technical in character and refers to the Mining Code (Statute 210/1973) and to the territorial maps of the Hellenic Navy Hydrographic Department.

The minister of development or other ministers that may be occasionally involved may issue decisions at any stage of oil exploration and production to impose additional obligations or specific demands relating to such matters as national security, public health, safety of transportation, environmental protection, protection of national treasures, and safety of employees and facilities.

High oil potential is said to exist throughout the Aegean Sea, yet several geopolitical peculiarities, including the fragile relations with neighbouring Turkey, have confined exploitation to relatively shallow depths of up to 3,000 metres and have discouraged the exploration of a great number of areas.

11 What government body regulates oil exploration and production in your country? What is the character of that regulation?

Chapter A of the Hydrocarbons Law is entitled 'Exercise of Public Interests', which indicates that the rights of prospecting, exploration and exploitation of hydrocarbons are treated as exclusively public. As pointed out in article 2 of this statute, the exercise of such rights is always conditional upon 'public interest'.

Ownership of oil and other hydrocarbons is thus vested with the Greek state. The concession contract is signed by the minister of development on behalf of the Greek state and is granted either through a lease contract or a contract for production sharing. Hellenic Petroleum SA acts as a technical adviser to the Ministry throughout the selection of applicants and the monitoring of concession contracts.

- 12** If royalties are paid, what are the royalty rates? Are they fixed? Do they differ between onshore and offshore production?

In accordance with the Hydrocarbons Law (article 2(26) and (27)), royalties are payable to the state for oil exploration and production. Royalties are not fixed; factors such as size of projected production, geographical and geological features, projected expenses and profits are all taken into consideration in setting the royalty rate. Under the leasing contract agreement, the concessionaire has the obligation to undertake all necessary preparations and research and to bear all related costs and financial risks. Thus, if the deposits found are not profitable or are insufficient, the agreed royalties will still be payable to the state. Under the production-sharing contract, the concessionaire assumes the role of a contractor. If hydrocarbons are produced, part of the production goes to the concessionaire to cover expenses while the rest of the annual production is shared between the state and the concessionaire as agreed in the contract.

- 13** What is the customary duration of oil leases, concessions or licences?

According to the Hydrocarbons Law and the Licence Code, the duration of leases, concessions and licences is the following: six years for onshore and up to seven years for offshore exploration; 25 years for exploitation; 40 years for distillation; 10 years for trade; four years for oil products supplied directly from refineries or imports; 40 years for pipeline transportation; four years for heating oil supply; four years for LPG supply; and eight years for the bottling of LPG.

- 14** For offshore production, how far seaward does the regulatory regime extend?

In line with the UN Convention on the Law of the Sea, which was ratified by Statute 2321/1995, Greece has adopted that its territorial waters may extend to 12 nautical miles from the coastline. However, neighbouring Turkey questions how such a zone is to be applied to the Greek islands in the Aegean Sea. The matter has been disputed so fiercely that the way it is treated and enforced by both countries is regarded as a possible cause of war. This has not only created uncertainty over the extent to which the regulatory regime for oil production is applicable but has also put prospecting and exploration in the Aegean Sea on hold.

- 15** Who may perform exploration and production activities? What criteria and procedures apply in selecting such entities?

A legal or natural person, acting alone or in the form of a joint venture, and residing in any member state of the EU, may perform exploration and production activities. Under the principle of reciprocity, persons from third countries may also perform such activities.

Exploration and production rights are granted through a public tender in accordance with which an invitation to tender is issued and formally published. Emphasis is placed on the applicants' financial status, technical capacity, track record and financial offer. The minister of development has the discretion to reject all offers if he or she personally considers that no offer is of sufficient economic benefit to the state.

- 16** What is the legal regime for joint ventures?

Article 4 of the Hydrocarbons Law allows the participation of a joint venture as a concessionaire and also provides the possibility of forming a joint venture with the state. The rules applicable to joint ventures are the same as those applied to concessionaires of other legal forms.

The obligations of a concessionaire with the form of a joint venture are set out in the Licence Code (article 18(4)(v) and (vi)). The

concessionaire must inform the minister of any structural modification or any amendment to the composition of its board of directors or to the legal representatives or managers, and must submit all certificates relating to such amendments.

- 17** How does reservoir unitisation apply to domestic and cross-border reservoirs?

Under article 18 of Presidential Decree 193/1979 (Type of Contract for the Lease of Hydrocarbons Exploration and Production) and article 5(5) of the Hydrocarbons Law, the minister of development may invite concessionaires to prepare a unified report for exploration and production. The minister may decide to do so for financial reasons and for the enhancement of exploration and production. If the minister requests a unified report, the concessionaires are invited to submit, within a specified period, a unified plan for joint prospecting and exploitation. The minister may amend the submitted plan; if it is not amended within two months, the submitted plan is considered approved. If a plan is not submitted following the minister's request or the one submitted is not approved, the minister may himself or herself dictate such a plan. If the involved concessionaires submit objections to this decision, the matter will be resolved either by an arbitrator or, in the absence of an agreement to submit disputes to arbitration, by the Athens Court of Appeal.

Transportation

- 18** How is transportation of crude oil and crude oil products regulated within the country and across national boundaries? Do different government bodies and authorities regulate pipeline, marine vessel and tanker truck transportation?

Statute 2978/2001 has ratified the Umbrella Agreement on the Institutional Framework for the Establishment of Interstate Oil and Gas Transportation Systems, which was signed in Kiev on 22 July 1999. This international agreement sets out common rules and mechanisms safeguarding the operation of interstate oil and gas transportation.

The Ministry of Development is responsible for the issue of licences for pipeline transportation after examining that the applicant has all the necessary facilities and establishments required for this activity. The holder of a licence for pipeline transportation is not allowed to undertake wholesale trade unless also granted a trade licence.

Presidential Decree 146/1998 (Regulation for the Safe Transportation of Crude Oil and Crude Oil Products in Bulk, Liquefied Chemicals in Bulk and Liquefied Gas in Bulk by Marine Vessels, the Transportation Regulation for Marine Vessels) sets out rules on the transportation of crude oil and crude oil products by marine vessels both within the country and across national boundaries. The body regulating such transportation is the Directorate for the Monitoring of Commercial Vessels operating under the Ministry of the Merchant Marine.

A circular about truck transportation issued by the Ministry of Transportation on 14 June 2006 (paragraphs 1.38 to 1.41) sets out specific provisions for the transportation of oil products. The circular provides, inter alia, for the specific products allowed to be transported, for the documentation that must accompany the transportation, and for the requisites of the loading and unloading locations.

- 19** What are the requisites for obtaining a permit or licence for transporting crude oil and crude oil products?

A licence to trade crude oil as well as crude oil products requires that storage facilities be maintained; such facilities need to have a pipeline connection to a refinery, to the sea or to a railway. A licence for the transportation of oil and oil products via a pipeline requires that an installation and operation licence in accordance with Statute 2526/1997 must first be obtained. A retail trade licence for oil

products requires that the licensee has procured adequate transportation means (ie, trucks owned either by the refinery or by the trade licensee) to supply all retailers directly from the refineries.

Health, safety and environment

- 20** What health, safety and environment requirements apply to oil-related facility operations? What government body is responsible for this regulation; what enforcement authority does it wield? Are permits or other approvals required? What kind of record-keeping is required? What are the penalties for non-compliance?

In accordance with the Hydrocarbons Law, the minister of development may impose, at any stage of the prospecting, exploration and exploitation of hydrocarbons, additional requirements due to concerns about national security, public health, safety of transportation, environmental protection, safety of national treasures, health and safety of employees and the safety of the facilities. Additionally, the minister of development may impose specific regulations relating to the construction of facilities and to the drilling process for purposes of health and safety and the protection of flora and fauna, fisheries, navigation and archaeological treasures. The minister may impose a fine of up to €1.5 million for every violation of such requirements. The local port authorities impose fines for violations regarding sea pollution and damage to the flora and fauna of the sea.

Ministerial Decision 344/1990 (Fire Safety of Refineries and Other Oil Facilities) provides that the managers of oil facilities must submit for approval a safety report to the Greek Fire Department. This report is approved by the Fire Department only if the concerned facility operates in accordance with the health and safety rules and with the fire safety requirements set out in the above ministerial decision. In such case the Fire Department issues a fire safety certificate, which is a requisite for the granting of an operation licence. If any rule about fire safety is breached, the fire safety certificate may be revoked.

Presidential Decree 118/2006 (Terms for the Operation of Service Stations) sets out the health and safety rules applicable to all service stations. Crucially, certain methods and materials are specified in relation to the construction of the facilities (article 9) and various fire safety rules are provided for the safe operation of the service stations. If any such rule is breached, the local prefectures and their directorates for transportation are responsible for the temporary or permanent revocation of the service station's operation licence (article 14).

- 21** What health, safety and environmental requirements apply to oil and oil product composition? What government body is responsible for this regulation; what enforcement authority does it wield? Is certification or other approval required? What kind of record-keeping is required? What are the penalties for non-compliance?

Under article 20a of Statute 1571/1985 (Oil Policy), the State Chemical Laboratory is the state body responsible for the regulation of the composition of oil and oil products. This body is responsible for supervising and monitoring the chemical and material composition of oil and oil products throughout their import, storage, distribution and trade. It is also responsible for setting standards for the composition of oil products and for the approximation of national legislation with EU law.

Ministerial Decision 344/1990 (Fire Safety of Refineries and Other Oil Facilities) sets out all chemical substances to be monitored in oil-related industries as well as the safety rules to be followed in their handling. The local fire department is responsible for monitoring the compliance of the facilities with this ministerial decision and, in the case of non-compliance, it may revoke the fire safety certificate. Such revocation may result in the revocation of the operation licence.

Labour

- 22** What government standards apply to oil industry labour? How is foreign labour regulated? Are there anti-discrimination requirements? What are the penalties for non-compliance?

Under the Hydrocarbons Law (article 6(10)), the concessionaire is obliged to train annually an expert technician and qualified staff pursuant to ministerial decisions issued by the minister of development. These decisions regulate labour matters such as staff qualifications, training and severance payment.

The concessionaire as well as its contractors and the subcontractors may employ foreigners. To do so, they need to apply to the minister of development for the grant of work and residence permits for those foreign employees and their families (Hydrocarbons Law, article 6(8) and (9)).

Taxation

- 23** What is the tax regime applicable to oil exploration, production, transportation, and marketing and distribution activities? What government body wields tax authority?

According to the Hydrocarbons Law (article 8), the concessionaire is subject to a special income tax of 40 per cent. The imposed tax is calculated on the net income of the concessionaire as accrued from the activities of prospecting, exploring and exploiting hydrocarbons. The Ministries of Finance and of Development are responsible for monitoring the tax compliance of legal entities involved in such activities and issue a joint decision published in the Government Gazette on tax-related matters (eg, format and content of the tax declaration, amortisation issues, tax payment procedure, etc).

Oil products licensees falling under the scope of the activities of the Oil Products Law are subject to the income tax rates of Statute 2239/1994 (Income Tax Regulation), that is, 25 per cent for corporations (*sociétés anonymes* and limited liability companies) and 20 per cent for partnerships. Sole proprietors are subject to a progressive income tax scale.

Commodity price controls

- 24** Is there a mandatory price-setting regime for crude oil or crude oil products? If so, what are the requirements and penalties for non-compliance?

According to article 20 of the Oil Products Law, there are no mandatory price-setting rules for crude oil and crude oil products in Greece. However, the minister of finance may issue a decision setting ceiling prices following a proposal of RAE. Such a measure is intended to temporarily prevent adverse financial impacts on the national economy of steep increases in international crude oil and crude oil products prices. Such a regime may stay in force for a maximum of two months.

Competition, trade and merger control

- 25** What government bodies have the authority to prevent or punish anti-competitive practices in connection with the extraction, transportation, refining or marketing of crude oil or crude oil products?

The Ministry of Finance has the authority to exercise price control (see question 24). The Competition Commission is competent to rule on any breach of competition legislation in the oil industry and to exercise merger control. In a recent report published in January 2007, the Commission proposed several measures towards the strengthening of competition in the oil products market.

- 26** What is the process for procuring a government determination that a proposed action does not violate any anti-competitive standards? How long does the process generally take?

According to article 9(1) of Statute 703/1977 (Control of Monopolies and Oligopolies and Protection of Competition, as amended by Statute 3373/2005), the Competition Commission may undertake an audit on its own initiative or following the filing of a complaint or after a proposal made by the Ministry of Development. Depending on the outcome of the audit, the Commission may impose a penalty of up to 15 per cent of the company's gross annual income. The company must notify the chairman of the Competition Commission within 15 days of the service of the Commission's decision on the steps the company intend to take, or has taken, for the remedy of the breach. Depending on this action plan, the Competition Commission may reduce or withdraw the initial penalty.

A main objective of the Oil Products Law was to strengthen competition, rationalise the maintenance of emergency reserves and develop fuel trading mechanisms that would reduce smuggling. A report published in January 2007 by the Competition Commission shows that there is still a long way to go before true competition is attained. The Competition Commission argues that the Oil Products Law is susceptible to distortions of competition and has proposed various amendments to competition law to facilitate the truly competitive functioning of the market.

International

- 27** To what extent is regulatory policy or activity affected by international treaties or other multinational agreements?

The amendments to the Oil products Law by Statute 3335/2005 and the enactment of Ministerial Decision 9480/2003 ensure that Greece complies with EU law following decision C-398/98 *Commission v*

Update and trends

Energy legislation is expected to be thoroughly revised in 2010; however, such revision is unlikely to affect the oil and oil derivatives sector to any notable degree.

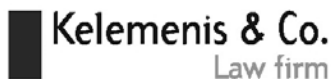
Greece of the European Court of Justice. This held that Greece failed to harmonise its national legislation in accordance with article 28 (formerly article 30) of the EC Treaty and operated an inappropriate maintenance system of emergency stocks. It was therefore necessary to pass new legislation to restructure the Greek oil products market in accordance with the EU provisions.

- 28** Are there special requirements or limitations on the acquisition of oil-related interests by foreign companies or individuals?

Following the conclusion of a contract for prospecting, exploring or exploiting hydrocarbons, the concessionaire may not come under the direct or indirect control of a non-EU member state or a national of such a state without the prior consent of the Council of Ministers. Any breach of this provision will result in the termination of the concession (article 4(3) of the Hydrocarbons Law).

- 29** Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products?

In line with EU law, the Oil Products Law (article 15(3)) provides that imports and exports of crude oil and crude oil products are free and regulated within an open and competitive market without being subject to special permissions.



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