



GREEK LAW DIGEST

The Ultimate Legal Guide
to Investing in Greece

Kelemenis & Co.

NATURAL GAS



NOMIKI BIBLIOTHIKI



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Useful insights of the Greek Economic Environment	16
Judicial System	33
Basic Aspects of Civil Law	75
Business Entities	111
Banking System - Finance - Investment	185
Mergers & Acquisitions	243
Financial Contracts	275
Financial Tools	299
Competition	313
Industrial & Intellectual Property Rights	337
Transportation	355
Insurance	403
Insolvency - Bankruptcy	411
Tourism	425
Technology - Media - Electronic Communications	433
Energy	467
Environment	505
Real estate	571
Food & Beverage	589
Life sciences	597
Consumer protection	605
Personal data	611
Lottery – Games	619
Sports Law	625
Employment	633
Immigration	653
Exports / Imports/ Customs	661
Tax	667
Legal profession in Greece	703
Related information	705

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■ ENERGY



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NATURAL GAS

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Give a brief overview of the legislative framework for the Greek natural gas sector and identify any trends

Natural gas was first imported in Greece from Russia in 1997. Still today, Greece heavily relies on Russian gas (currently accounting for 57% of the overall gas imported into the country) and on long-term supply contracts. The country has been consequently categorised as an emerging gas market and was granted derogation from the implementation of Directive 98/30/EC until November 2006. Pursuant to statute 2364/1995, DEPA (the Greek public gas corporation) was granted the non-transferable right to import, transfer and sell natural gas in Greece, and undertook the construction and operation of the natural gas transmission network. Gradual liberalization of the Greek gas market was eventually promoted through statute 3428/2005, implementing the 2nd Gas Directive (Directive 2003/55/EC). Statute 3428/2005 defined the National Natural Gas Transmission System (NNGS) and appointed DESFA (a 100% subsidiary of the vertically-integrated DEPA) as the owner and operator (TSO) of the NNGS. Pursuant to statute 3428/2005, DESFA had been subject to a system of governance akin to the ITO unbundling model of the 3rd Energy Package. Statute 3428/2005 also set out the rules for third-party, non-discriminatory and transparent access to the NNGS under regulated tariffs, including the principles of congestion management and capacity allocation, the minimum set of supervisory duties assigned to the National Regulatory Authority for Energy (RAE), and the provision of public services obligations (PSO). Further market opening has been advanced through the recent statute 4001/2011, which transposed the provisions of the 3rd Energy Package and aims at establishing the conditions for the integration of the national gas markets into an EU single energy market. Statute 4001/2001 enhances TSO unbundling requirements by implementing the ownership unbundling model, strengthening the RAE's independence and powers, and promoting regional cooperation.

What is the organizational structure for the generation, transmission, distribution and sale of natural gas in Greece?

The NNGS comprises of a main pipeline of approximately 512 km for the transmission of natural gas through the three gas entries to the Greek territory (Greek/Bulgarian borders in the North, Greek/Turkish borders in the East and LNG terminal in the South). Currently, there are no gas storage facilities and the Revythoussa LNG terminal is used for limited temporary storage to serve TSO's balancing purposes. The Greek natural

gas market lacks integration with the adjacent markets of Bulgaria and Turkey, mainly because of possible contractual congestion at three exit points (Thessaloniki, Inofyta and Platy). Greece has no generation capacity and its security of supply is exclusively relied on natural gas imported by DEPA from Russia, Turkey and Algeria pursuant to long-term supply contracts. DEPA consequently holds a dominant market share of approximately 80% of the market. Therefore, there are no gas hub services or other structures of organized wholesale trading at place. Nonetheless, the LNG terminal in Revythoussa has contributed to some extent in customers being supplied with natural gas at spot prices. The existing distribution system is developed, maintained and operated by the so-called EPAs which have been established by virtue of statute 2364/1995 [each one designated as the exclusive distribution system operator (DSO) and household customers' supplier for the geographic regions of, respectively, Attica, Thessaloniki and Thessalia). The EPAs are joint ventures, in which DEPA participates by 51% and private investors by 49%, operating under a 30-year license issued by the Minister of Development. The new EPAs are to be established pursuant to the provisions of statute 2364/1995 and in accordance with the Decision of the European Commission to grant a derogation 11/IX/2008 under article 28 (4) (5) of the 2nd Gas Directive. The new EPAs have been designated to operate within the geographic areas of Central Greece, Central Macedonia and Eastern Macedonia/Thrace. DEPA may hold an international tender for the establishment of these new EPAs.

Pursuant to article 82 of statute 4001/2011, the following customers are eligible to select their supplier:

- all customers outside the geographic territories of the already operating and the future EPAs;
- inside those territories, the electricity producers, the customers consuming at least 100,000 MWh/pa, non-household customers supplied with natural gas for the purposes of using it as a fuel for propellant use, and the already operating EPAs for the quantities of natural gas they require in excess of the quantities specified in their supply agreement with DEPA (following the contract's expiry, these EPAs shall become fully eligible customers); and
- future EPAs

What authorisations are required to construct and operate transmission networks and who is eligible to provide transmission services?

The ownership and operation of the NGGS is granted to DESFA by law. DESFA operates the NGGS pursuant to a network code introduced in 2010 regulating the operation, maintenance and expansion of the NNGS as well as the provision of third party access (TPA) services. For the establishment of independent natural gas transmission, storage and LNG systems (the so-called "ASFAs"), a prior administrative license must be issued by RAE (articles 74 and 75 of Statute 4001/2011). The ASFAs' operator is appointed in compliance with the unbundling rules of the 3rd Energy Package by virtue of a license

granted by RAE in accordance with the License Code. To date, there no natural gas systems in operation other than the NNGS. DESFA and any independent transmission system operator must be certified by RAE as a fully unbundled TSO, pursuant to the certification procedure introduced by the 3rd Energy Package.

What are the rules on third party access (TPA) and how are transmission and distribution services regulated?

DESFA must provide NNGS' users with access in the most economic, transparent and non-discriminatory means, pursuant to the provisions of the NNGS Code introduced in 2010 and recently amended to align the rules of capacity allocation with the Framework Guidelines on Capacity Allocation Mechanism for the European Gas Transmission Network published by ACER (Framework Capacity Allocation Guidelines).

Access to the NNGS is provided on the basis of the NNGS user concluding the following standard TPA contracts with DESFA:

- Natural Gas Transmission Agreements,
- LNG Facility Usage Agreement and
- Agreements for Use of Storage Facility.

DESFA's tariffs are still set by Ministerial Decision 4955/2006 because the Tariff Regulation, which will be issued by RAE, has not been published yet and is currently under public consultation.

Greece has opted to derogate from the 3rd Gas Directive's unbundling rules regarding the already existing EPAs, which will continue to be subject to accounting unbundling (as opposed to legal unbundling) pursuant to the provisions of article 49(8) of the 3rd Gas Directive. Consequently, the existing EPAs will continue to offer natural gas within their designated areas under bundled prices on an exclusivity basis. The pricing policy of the existing EPAs consists of two different charges:

- (a) a connection fee, and
- (b) a gas supply price that is further split into two elements, i.e. the variable gas price (depending on consumption) and a fixed charge that is payable by the customer (irrespective of consumption) on a monthly basis.

The existing EPAs are allowed to set their pricing policy freely, provided that such policy is transparent and non-discriminatory. Moreover, the revenue that each EPA can collect annually cannot exceed a maximum amount ("revenue cap"). Overall the regulatory regime governing the EPAs aims at promoting the natural gas consumption based on exclusivity rights and derogations from the EU unbundling rules.

What are the balancing rules applicable to the Greek natural gas transmission system?

The 2010 NNGS Code established an Entry/Exit System, i.e. a single balancing zone for NNGS (3 entry points and 35 exit points). In 2011 the NNGS Code was amended because of the Framework Capacity Allocation Guidelines and introduced the virtual delivery

and off-take of natural gas to the entry/exit points (with the exception of the entry point of the LNG terminal). DESFA is responsible for the balancing of the national natural gas transmission system (NGTS), i.e. the balance between the quantities delivered to and off-taken from the NGTS. To this end, DESFA may conclude contracts with Suppliers for the supply and delivery of natural gas, following a tender, based on transparent procedures that do not introduce discriminations and are based on market rules. These contracts are concluded after approval from RAE of the annual load balancing program (article 46 of the Network Code). DESFA imposes on NNGS users charges covering its expenses for the gas balancing of the NNGS (article 58 of the Network Code). A similar procedure is also applicable for the balance of shrinkage gas. DESFA keeps separate a gas balancing account to recuperate its balancing-related costs and imbalance charges are cleared monthly for each NNGS user. The balancing mechanism introduced in view of the absence of a wholesale liquid market and limited storage facilities provides that DESFA is still responsible for intra-day balancing, so that balancing requirements will not raise barriers to entry in the gas market. According to said balancing rules:

- Each shipper must balance its inputs and off-takes on a daily basis (balancing period);
- DESFA notifies shippers on their imbalance position at the end of each day;
- A tolerance level is set at $\pm 10\%$ (subject to biannual review). If a supplier exceeds the tolerance levels, a penalty is imposed by DESFA (article 52 of the NNGS Code). If the supplier fails to balance its outputs and off-takes for five consecutive days, the tolerance level is decreased gradually to reach 0%.

What are the capacity allocation rules applicable to the Greek natural gas transmission system?

The minimum time period for booking transmission capacity in the existing network is one day. For the usage of the LNG terminal, the minimum time period is one month. Each NNGS user may transfer to another user (or a party that has not been registered as a NNGS user yet) the entire or part of the so-called Transmission Capacity the user has booked at an Entry or Exit Point (Transferred Booked Transmission Capacity) with DESFA's prior consent. A UIOLI mechanism (the so-called Disengagement of Unused Booked Transmission Capacity) has been introduced to address contractual congestion. However, the UIOLI mechanism is, in principle, structured as an administrative procedure that does not provide incentives for the increase of the market liquidity and has been criticized to this end by market participants. Therefore, the NNGS Code was amended to also implement a UIOSI procedure in line with ACER's Framework Capacity Allocation Guidelines. The amended NNGS code has further introduced another interim measure to promote competition in the Greek natural gas market: the obligatory reservation by DESFA of 10% of the system's capacity in the virtual entry-points for short-term capacity allocation contracts.

What authorizations are required for natural gas supply and which authorities grant such approvals?

Pursuant to article 81 of statute 4001/2001 the supply of natural gas to eligible customer is undertaken following a license issued by RAE, pursuant to the License Code. Non-eligible customers are supplied by the EPAs or DEPA (in relation to geographic areas where future EPAs have not been established yet).

Is there any tariff or other regulation regarding natural gas sales?

EPA's supply of natural gas to non-eligible customers is subject to regulated tariffs approved by RAE pursuant to statute 2364/1995 and the provisions of each EPA's license. To this end, the EPAs submit to RAE their tariffs and the connection cost which will enter into force in the following year and RAE supervises whether said tariffs are transparent and cost-reflective. Currently all existing EPAs apply a cost-plus pricing mechanism, according to which their tariffs are the sum of the cost of supply by DEPA accrued with the cost of distribution and the mark-up of the company.

Although eligible customers are not subject to regulated tariffs, article 24 para 3 of statute 3175/2003 provides that any supply contract with power producers shall not contain terms which are more detrimental to the interests of power producers than the respective terms contained in the supplier's import contracts, in particular with regard to take-or-pay clauses.

Are there any public services obligations provided by law?

Articles 57 and 81 of statute 4001/2011 regulate the public services obligations (PSOs) of a supplier of last resort. In particular, in case of an emergency, suppliers must provide continuously natural gas to customers (with the exception of large customer), following an order directed by DESFA. There are no other measures introduced yet in relation to PSOs in the Greek natural gas market, because non-household customers are not eligible and, therefore, their supply with natural gas is provided under a monopolistic regime of the EPAs which operate under regulated tariffs.

Are vulnerable customers determined by law?

The following customers are determined as vulnerable by article 52 of statute 4001/2011:

- Household customers who are affected by energy poverty as defined in said statute;
- Customers who themselves or their wives or their cohabitants who are under their custody are dependent on the continuous supply of power, such as customers in need of mechanical support;
- Elderly customers, i.e. customers who are over 70 years old and do not cohabitate with a person who is below 70;

- Customers facing serious health or mental problems and are thus unable to negotiate and handle their contractual relationship with their supplier;
- Customers located in isolated areas and in particular in the non-interconnected islands and are entitled to be supplied with energy under the same tariffs and terms as those enjoyed by customers in mainland Greece.

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