



INTERNATIONAL
HELLENIC
UNIVERSITY

The Reform of the Natural Gas Market in Greece: Recent Developments and Challenges Thereof

Antonios Liolios

SCHOOL OF ECONOMICS, BUSINESS ADMINISTRATION & LEGAL STUDIES
A thesis submitted for the degree of
Master of Science (MSc) in Energy Law, Business, Regulation and Policy

January 2017
Thessaloniki – Greece

Student Name: Antonios Liolios
SID: 1108150010
Supervisor: Prof. Theodore C. Panagos

I hereby declare that the work submitted is mine and that where I have made use of another's work, I have attributed the source(s) according to the Regulations set in the Student's Handbook.

January 2017
Thessaloniki - Greece

Abstract

This dissertation was written as part of the MSc in Energy Law, Business, Regulation and Policy at the International Hellenic University.

Under specific derogations from the European energy law, the natural gas market in Greece, specifically as regards the distribution activity, was far from being liberalized, until the voting of L. 4336 in August 2015.

The natural gas market reform, imposed by the Greek Third Bailout Package of August 2015, has significant impact on EPAs' concession agreements and shareholders' value, but also presents significant challenges at legal, regulatory, strategic and operational level. The companies were transformed from their previous organizational model to a fully regulated network activity under strict regulatory oversight and a competitive supply activity, along with abolishment of their exclusive rights to distribute and supply natural gas in their license areas. Gradual eligibility for all natural gas consumers until the end of 2017 is another important provision of the law. Moreover, the law provides for a fully competitive environment for the supply activity, a new licensing regime, issue of distribution code and regulations, and regulated distribution tariffs, under the competence and control of the Regulatory Authority for Energy.

The purpose of my dissertation is to highlight the recent developments in the national legal framework regarding the liberalization of the natural gas market in Greece, focused on the distribution and retail market supply activity, along with the impacts and challenges for the natural gas companies. In this context, the general aspects of European and national energy law concerning upstream activities, i.e. natural gas production and transmission, and aspects of security of supply and cross-border trade are not examined in the present paper.

Hence, this dissertation describes the main legislative and regulatory provisions prior to and after the aforementioned law. Chapter 1 is an introduction to the subject. The previous legal framework, on a European and national level is described in Chapter 2, focusing on the derogations from the European directives, as applied in national legislation and on the natural gas market. Chapter 3 refers to the current legal

framework, namely the third liberalization package and its transposition to the national Energy Law 4001 in 2011.

Chapter 4 presents the new pieces of legislation passed by the Greek government in 2015 and afterwards, namely L. 4336/2015 and its amendments. The new framework and its legal aspects are analysed in a critical manner, presenting in addition the challenges it poses for the market players, especially the gas supply and distribution companies, formerly known as EPAs.

Finally, key conclusions are presented in Chapter 5 of the dissertation.

My supervisor on this essay has been Dr. Theodore Panagos, who stipulated my interest on Energy Law in general, and whose course at the International Hellenic University has been of utmost value for me on an academic, but also on a professional level. Therefore, I am thankful for his continuous effort to improve my knowledge and understanding of energy law, and grateful for his support and guidance throughout the preparation of my dissertation.

Antonios Liolios

January 2017

Contents

ABSTRACT	III
CONTENTS	V
CHAPTER 1 – INTRODUCTION	1
CHAPTER 2 – THE PREVIOUS LEGAL FRAMEWORK.....	3
2.1 THE ROAD TO LIBERALIZATION – A HISTORICAL OVERVIEW.....	3
2.2 THE PREVIOUS EUROPEAN LEGAL FRAMEWORK.....	3
2.2.1 <i>The First Liberalization Package</i>	4
2.2.2 <i>The Second Liberalization Package</i>	5
2.3 THE PREVIOUS NATIONAL LEGAL FRAMEWORK	6
2.4 DEROGATIONS FROM EUROPEAN LAW	8
CHAPTER 3 – THE CURRENT LEGAL FRAMEWORK.....	11
3.1 THE THIRD LIBERALIZATION PACKAGE.....	11
3.2 THE GREEK ENERGY ACT.....	16
CHAPTER 4 – THE RECENT DEVELOPMENTS IN THE LEGAL FRAMEWORK IN GREECE	19
4.1 THE L. 4336/2015	19
4.2 AMENDMENTS OF L. 4336/2015.....	23
4.3 A CRITICAL VIEW ON L. 4336/2015	25
4.4 IMPLEMENTATION OF THE LAW AND CHALLENGES THEREOF	28
CHAPTER 5 – CONCLUSIONS	31
BIBLIOGRAPHY.....	33

Chapter 1 – Introduction

As the International Monetary Fund reported in June 2014: *“Finally, the gas market is being liberalized. Gas consumption in Greece is among the lowest in the EU in per capita or per GDP terms, indicating scope for increased consumption to reduce costs and provide cleaner energy. The three local gas distribution monopolies will be opened to competition, and the gas transmission company has been sold (the deal is awaiting regulatory approval)”*.

Based on the above, the IMF, in consultation with the European Commission services, had established a roadmap to transition Greece to a more mature market model, increasing the degree of competition at all levels, and transferring the advantages to the broadest possible set of consumers. Any changes to existing arrangements were to be fiscally neutral.

Following the adoption of L. 4001/2011 to transpose the Third Liberalization Package, the - yet unsuccessful - attempts for the sale of DESFA and the privatization of DEPA were important elements. However, several issues needed to be addressed in the gas market in order to fully reap the benefits of the liberalization and transition to the new market model.

Following the transformation roadmap, and under the requirements of the 3rd MoU with the country’s creditors, L. 4336/2015 was passed in August 2015, amending several provisions of L. 4001/2011. According to the new legislation, gas supply companies in their previous form, EPAs, had to transition, to a regulated model whereby the activities of Distribution and Supply will be legally and functionally separated, i.e. unbundled in accordance with requirements of Directive 2009/73/EC and L. 4001/2011. The aforementioned aimed to allow for the opening of the supply market to the competition, by the gradual transition of all gas customers to full eligibility by the end of 2017.

This transformation has significant impact on EPAs’ exclusive rights concession agreements and shareholders’ value, but also presents significant challenges at strategic, operational, legal and regulatory level, as the companies transformed from their previous organizational model to a competitive supply activity and a fully regulated distribution activity.

The provisions of L. 4336/2015 proceeded in fact to an early violent cancellation of the granted distribution licenses. Therefore, EPAs' shareholders could challenge the provisions of the Law, and claim reimbursement or other measures for mitigating the valuation gap between the previous licensing scheme and the new framework.

Chapter 2 – The Previous Legal Framework

2.1 The Road to Liberalization – A Historical Overview

Until the '90s, the natural gas market in Europe has been characterized largely by state-owned or state-controlled monopolies, with exclusive or preferential rights to import or export, transport, supply and distribute gas.

In accordance with the basic provisions of the Treaty on the Functioning of the European Union, the main objective of the liberalization process was to establish an economic area without internal frontiers where the free movement of goods, persons, capital and services is guaranteed, including effective competition and open access.

Following the initiation of the single market initiative and liberalization agenda, EU energy law and regulation now require inter alia third party access to networks and unbundling of activities. Unbundling¹ is the separation of energy supply and generation from the operation of transmission networks. If a single company operates a transmission network and generates or sells energy at the same time, it may have an incentive to obstruct competitors' access to infrastructure. This prevents fair competition in the market and can lead to higher prices for consumers.

The controlled introduction of liberalization and concepts such as third party access, unbundling and competition in the EU internal energy market following the three Liberalization Packages had the implication of requiring Member States to significantly alter the regulatory and organizational structures of their energy markets.

2.2 The Previous European Legal Framework

The previous legal framework consists of the Directives 98/30/EC² and 2003/55/EC³, which along with the directives for the electricity market, are also known as First and Second Liberalization Packages.

¹ See <https://ec.europa.eu/energy/en/topics/markets-and-consumers/market-legislation>

² Directive 98/30/EC of 22 June 1998 concerning common rules for the internal market in natural gas [1998] OJ L204/01 (“First Gas Directive”).

³ Directive 2003/55/EC 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC [2003] OJ L176/57 (“Second Gas Directive”).

2.2.1 The First Liberalization Package

The First Liberalization Package, issued for natural gas markets in 1998, was fundamentally aimed at promoting liberalization in the national energy markets across the continent⁴.

The First Gas Directive provided the initial steps towards the restructuring of the gas supply sector and the establishment of specific conditions for access to the networks. The Directive provided a gradual transformation of the gas market, taking into account the need for a flexible and ordered change to the new environment and the different market structures of each Member State⁵.

The Directive established common rules for the transmission, distribution, supply and storage of natural gas. It laid down rules relating to the organization and functioning of the natural gas sector, including liquefied natural gas (LNG), access to the market, the operation of systems, and the criteria and procedures applicable to the granting of authorizations for transmission, distribution, supply and storage of natural gas⁶.

For the distribution activity, the Directive provided for “distribution undertakings” the obligation to “not discriminate between system users” and to “provide information” to users and other undertakings, preserving the confidentiality of commercially sensitive information, while safeguarding the secure, efficient and reliable operation of the distribution networks⁷.

Moreover, the Directive set the first rules for the accounting unbundling⁸. More importantly, regarding access to the infrastructure, the Directive provided two alternatives, namely negotiated or regulated access to the system⁹, while a distribution undertaking could refuse access only for specific reasons¹⁰.

⁴ See *Panagos Th.*, *The Unbundling of the Companies in Energy Sector*, Sakkoulas Editions, 2011, pp. 16-18.

⁵ See recital 7 of the preamble of the Directive 98/30/EC.

⁶ See Article 1 of the Directive 98/30/EC.

⁷ See Articles 10 and 11 of the Directive 98/30/EC.

⁸ See Article 13 of the Directive 98/30/EC.

⁹ See Articles 15 and 16 of the Directive 98/30/EC.

¹⁰ See Article 17 of the Directive 98/30/EC.

Furthermore, the Directive laid down basic rules for eligibility, meaning the freedom of choice for customers to contract for, or to be sold, natural gas. The Directive explicitly connected the matter of eligibility with the opening of the market¹¹.

Also, basic rules for authorization procedures were laid down in the First Gas Directive, designating a competent authority for the grant of authorizations, acting also as a dispute settlement mechanism¹².

Finally, the Directive included provisions for possible derogations from certain articles, under specific prerequisites.

2.2.2 The Second Liberalization Package

The Directive 98/30/EC did not set any specific rules for the legal and functional unbundling of natural gas undertakings.

The Second Liberalization Package, adopted in 2003, reinforced the powers of regulatory authorities, including provisions for establishing an independent national regulatory authority (“NRA”), provided for gradual eligibility for all consumers, thus enhancing a competitive market and facilitating customer switching, sought to enhance third party access, and set specific obligations for legal and functional unbundling of gas undertakings.

Furthermore, the Second Directive sought to ensure a level playing field and to reduce the risks of market dominance and predatory behavior by incumbents, while ensuring non-discriminatory transmission and distribution tariffs, and that the rights of small and vulnerable customers are protected¹³.

The Directive defined the tasks of the distribution system operator (DSO) to operate, maintain and develop under economic conditions a secure, reliable and efficient system, with due regard for the environment and their obligation not to discriminate between system users or classes of system users, particularly in favor of its related undertakings¹⁴.

¹¹ See Article 18 of the Directive 98/30/EC.

¹² See Articles 20-22 of the Directive 98/30/EC.

¹³ See recital 2 of the preamble of the Directive 2003/55/EC.

¹⁴ See Articles 11 and 12 of the Directive 2003/55/EC.

For the first time, the idea of legal unbundling was introduced, highlighting that, *“in order to ensure efficient and non-discriminatory network access it is appropriate that the transmission and distribution systems are operated through legally separate entities where vertically integrated undertakings exist”*¹⁵.

In addition, the Directive set specific rules for the legal and functional unbundling of the DSOs, their independence at least in terms of legal form, organization and decision making from other activities not relating to distribution, where the DSO is part of a vertically integrated undertaking.

Eligibility was provided to be done gradually. Yet, from the 1st of July 2007, all customers were to become eligible, thus free to choose their supplier.

A basic difference in comparison to the First Gas Directive, is that third party access to distribution systems is based only on regulated, published tariffs, applicable to all eligible customers, including supply undertakings, and applied objectively and without discrimination between system users. Furthermore, these tariffs, or the methodologies underlying their calculation must be approved and published prior to their entry into force by the regulatory authority¹⁶.

Secondly, the regulatory authority, characterized now as wholly independent of the interests of the gas industry, is granted increased authorities and responsibilities for ensuring non-discrimination, effective competition and efficient functioning of the market, proper monitoring the market, imposing sanctions when appropriate, and acting as a dispute settlement authority¹⁷.

Finally, the Second Gas Directive, as the first, included provisions for possible derogations, under certain prerequisites.

2.3 The Previous National Legal Framework

Natural gas first entered the energy mix of Greece 1997. The State controlled Public Gas Corporation SA DEPA was granted, under the provisions of L. 2364/1995, the rights for planning, constructing and exploiting the national natural gas transportation system and the distribution network, the right to import and export natural gas as the

¹⁵ See recital 10 of the preamble of the Directive 2003/55/EC.

¹⁶ See Article 18 of the Directive 2003/55/EC.

¹⁷ See Article 25 of the Directive 2003/55/EC.

well as the right to sell gas to the regional gas distribution and supply companies and large consumers.

For the implementation of L. 2364/1995, the Greek State decided the penetration of natural gas in the energy system of the country, using it both in power generation, as well as for industrial and household consumption. The above decision constituted the national energy strategy. In parallel, it was part of the general EU policy of using energy products with friendly qualities towards the environment and the diversification of energy sources. In the above context, and in order, for the rapid development of natural gas and the efficient handling of the final consumer, the Law enclosed provisions concerning the establishment of special purpose companies, named Gas Distribution Companies (DSOs or EPAs). EPAs would undertake to develop the natural gas grid and they would be awarded with an exclusive concession of the natural gas distribution in the territory covered by the concession¹⁸.

Within this context, the gas supply activity to non-eligible customers in specific areas, while also, in a bundled licensing scheme, the distribution network in Greece has been developed, maintained and operated by the three EPAs, namely EPA Attiki S.A, EPA Thessaloniki S.A. and EPA Thessalia S.A. The purpose of the companies was the exercise of the rights of planning, design, construction and operation of the Natural Gas Distribution System, operating within specific geographical areas and the right to supply natural gas to customers within the specific geographical limits.

The above companies were established following an international public tender for the selection of a private investor, with significant relevant experience, and which could guarantee the proper functioning and development of the market, who would participate in the establishment and management of a Société Anonyme (S.A.), with the sole purpose of exercising the above rights for the supply and distribution of natural gas within specific geographical areas. The companies would also undertake the obligation of developing the Natural Gas Distribution System within a specified period, in connection with certain other obligations for the service of public interest. The tender was conducted by DEPA¹⁹, according to L. 2364/1995 and was awarded to

¹⁸ See Articles 4 and 7 of L. 2364/1995, Official Gazette A' 252/6.12.1995.

¹⁹ See Presidential Decree 10/1998, Official Gazette A' 19/30.1.1998, "Defining the terms of tender and the conditions for the participation of private investors to Natural Gas Companies".

the Italian company Italgas²⁰, for the areas of Thessaloniki and Thessalia, and to Shell, for the area of Attiki.

Thus, the three former EPAs, EPA Thessaloniki S.A., EPA Thessalia S.A., and EPA Attikis S.A. were formed as joint ventures by DEPA, participating by 51%, and the above mentioned private investors, participating by 49%.

With Ministerial Decisions of the Ministry for Development, the three EPAs were awarded the licenses for exclusive distribution rights, as well as exclusive rights for the supply of natural gas within the territories of Thessaloniki, Thessalia and Attiki respectively. The licenses were granted for a period of 30 years.

Further to L. 2364/1995, L. 3428/2005 on the liberalization of the natural gas market, transposed the Second Gas Directive and set the framework for the natural gas market in Greece. The law further envisaged the functional unbundling of distribution license holders, where they are part of a vertically integrated natural gas undertaking²¹. Article 21 was explicitly related to the three former EPAs, and confirmed their exclusive right to exercise the activities of distribution and supply of natural gas to non-eligible customers, within their concession areas.

2.4 Derogations from European Law

The First Gas Directive²² lays down derogation under specific circumstances, such as for isolated markets, for emergent²³ markets, markets with one main external supplier, etc. Greece is entitled to special derogation being considered an emergent gas market, as the country was also not directly connected to the interconnected system of any other Member State and had only one main external supplier. Power to implement derogation is given to the Member State through transposition into national laws.

²⁰ Later absorbed by ENI SpA.

²¹ See Article 22 of L. 3428/2005.

²² Article 26 2. A Member State, qualifying as an emergent market, which because of the implementation of this Directive would experience substantial problems, not associated with the contractual take-or-pay commitments referred to in Article 25, may derogate from Article 4, Article 18 (1), (2), (3), (4) and (6) and/or Article 20 of this Directive. This derogation shall automatically expire from the moment when the Member State no longer qualifies as an emergent market. Any such derogation shall be notified to the Commission

²³ See Article 28 of the Directive 2003/55/EC. *“A Member State in which the first commercial supply of its first LT natural gas supply contract was made not more than 10 years earlier. Requirement for the derogation (10 years) fulfilled since natural gas was introduced to the energy mix in 1996”*.

The Second Gas Directive²⁴ confirms the same provision, such as for isolated markets, for emergent markets, and during development of the infrastructure capacity or of new infrastructures. An ad hoc paragraph on Greece's derogation was included. An ad hoc paragraph on Greece's derogation was also included in the Third Gas Directive²⁵. Due to the fact that Greece had been categorized as an emergent market, it was granted a derogation from the implementation of Directive 98/30/EC, under Article 49(8) of Directive 2009/73/EC.

Under the same provisions, the former EPAs derogate from the unbundling regime for the DSOs, as it is confirmed in Par. 7 of Article 87 of L. 4001/2011, which transposed the Third Energy Package into national law.

The former EPAs were granted the exclusive right for the supply of natural gas to "non-eligible" customers, meaning customers with consumption smaller than 100 GWh per consumption site and household customers, based in their respective designated areas. Thus, consumers located within these areas were obliged to purchase natural gas from the three EPAs.

The former EPAs applied a cost-plus pricing mechanism, under which the tariffs were bundled both for distribution and supply of gas, and were the sum of the gas purchase cost, where the exclusive supplier of the former EPAs was DEPA, plus a markup plus taxes. The markup was annually notified to the Regulatory Authority for Energy (RAE). It is important to highlight that these margins were not approved by the Authority prior to their entry into force, nor after, and they were not published. RAE annually supervised the observance of the distribution licenses, in terms of tariffs, i.e. controlled that the companies did not exceed a maximum allowed revenue, calculated

²⁴ Article 28 Emergent and isolated markets 8. Greece may derogate from Articles 4, 11, 12, 13, 18, 23 and/or 24 of this Directive for the geographical areas and time periods specified in the licences issued by it, prior to 15 March 2002 and in accordance with Directive 98/30/EC, for the development and exclusive exploitation of distribution networks in certain geographical areas.

²⁵ Article 49 Emergent and isolated markets 8. Greece may derogate from Articles 4, 24, 25, 26, 32, 37 and/or 38 of this Directive for the geographical areas and time periods specified in the licences issued by it, prior to 15 March 2002 and in accordance with Directive 98/30/EC, for the development and exclusive exploitation of distribution networks in certain geographical areas.

with parameters and methodology set in the licenses. Connection charges were also notified annually to RAE²⁶.

²⁶ See *Panagos Th.*, *The Legal Framework of the Energy Market*, Sakkoulas Editions, 2012., p. 146.

Chapter 3 – The Current Legal Framework

The current legal framework in Greece is largely based on the Energy Law 4001/2011, which transposed the Third Package to the national legislation.

3.1 The Third Liberalization Package

The Third Liberalization Package²⁷ was adopted in August 2009 and entered into force on March 3rd 2012. Its main goal is to implement real effective competition in the newly liberalised markets, and to achieve a competitive and transparent internal market for gas and electricity.

The Third Gas Directive 2009/73/EC focused on issues such as cross-border cooperation, third countries, increased powers of the NRAs, and mainly on the transmission activity, while for the distribution activity, its provisions were almost the same with the preceding directive²⁸.

Under the third package, the requirements²⁹ for national regulators have undergone a number of changes. Specifically: (a) regulators must be independent from both industry interests and government. They must be their own legal entity and have authority over their own budget. National governments must also supply them with sufficient resources to carry out their operations; (b) regulators can issue binding decisions to companies and impose penalties on those that do not comply with their legal obligations; (c) electricity generators, gas network operators, and energy suppliers are required to provide accurate data to regulators; (d) regulators from different EU countries must cooperate with each other to promote competition, the opening-up of the market, and an efficient and secure energy network system.

²⁷ Comprising of (a) Directive 2009/73/EC 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC [2009] OJ L 211/94 (“Third Gas Directive”), (b) Regulation (EC) No 715/2009 of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 [2009] OJ L211/36 (“2009 Gas Network Regulation”), (c) Regulation (EC) No 713/2009 of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators [2009] OJ L21 1/1 (“ACER Regulation”).

²⁸ See recital 25 of the Directive 2009/73/EC.

²⁹ <https://ec.europa.eu/energy/en/topics/markets-and-consumers/market-legislation>.

The unbundling regime of DSOs laid down in remains in substance unchanged as compared to the preceding regime³⁰. Where the DSO is part of a vertically integrated undertaking, the basic elements of this unbundling regime are the following: (a) legal unbundling of the DSO from other activities of the vertically integrated undertaking not related to distribution; (b) functional unbundling of the DSO in order to ensure its independence from other activities of the vertically integrated undertaking; (c) accounting unbundling: requirement to keep separate accounts for DSO activities; (d) possibility of exemptions from the requirement of legal and functional unbundling for certain DSOs.

The vertically integrated undertaking is in principle free to choose the legal form of the DSO, provided that this legal form ensures a sufficient level of independence of the management of the DSO from other parts of the vertically integrated undertaking in order to fulfil the requirements of functional unbundling³¹.

The European Commission issues an implementation note on unbundling in the Electricity Directive and the Natural Gas Directive, providing a comprehensive overview of the new unbundling rules, set forth by the Third Energy Package.

Under the Third Directive, the DSO must have at its disposal the necessary resources, including human, technical, physical and financial resources, in order to fulfil its tasks of operating, maintaining and developing the network. This means that the DSO cannot unduly rely on the services of other parts of the vertically integrated undertaking, as the DSO itself must have the necessary resources at its disposal to operate, maintain and develop the network. Provision of services by other parts of the vertically integrated undertaking to the DSO will therefore be limited. Where such services are provided, conditions should be fulfilled to reduce competition concerns and to exclude conflicts of interest. In particular, any cross-subsidies being given by the DSO to other parts of the vertically integrated undertaking cannot be accepted. To ensure this, the service must be provided at market conditions and laid down in a contractual arrangement

³⁰ See Article 26 of the Directive 2009/73/EC.

³¹ Available at https://ec.europa.eu/energy/sites/ener/files/documents/2010_01_21_the_unbundling_regime.pdf.

The DSO must have effective decision-making rights, independent from other parts of the vertically integrated undertaking, with respect to assets necessary to operate, maintain or develop the network. In order to fulfil those tasks, the DSO must have at its disposal the necessary resources, including human, technical, physical and financial resources³². This does not necessarily imply that the DSO must own the assets. Where another part of the vertically integrated undertaking remains the owner of the assets and puts these at the disposal of the DSO, the basic decisions concerning the assets must remain with the DSO, while the other part of the vertically integrated undertaking may be involved in the implementation of these decisions, provided that safeguards are put in place ensuring that the other part of the vertically integrated undertaking only executes the decisions taken by the DSO.

The requirement of effective decision-making rights is without prejudice to the supervision rights of the vertically integrated undertaking in respect of the return on assets in a subsidiary. Regarding the scope of these supervision rights, the Gas Directive expressly refer to two items: the annual financial plan of the DSO or any equivalent instrument, and its overall level of indebtedness. Regarding the limits of the supervision rights, the Directives are equally clear: any detailed day-to-day oversight of the network function by parts of the vertically integrated undertaking other than the DSO is not permitted. Also, instructions regarding decisions on the construction or upgrading of the network, if these decisions stay within the terms of the approved financial plan, are not permitted.

Within the scope of the approved financial plan, the DSO must have complete independence. Furthermore, the financial plan, whilst it can be adopted by the vertically integrated undertaking, must be compatible with the requirement to ensure that the DSO has sufficient financial resources to maintain and extend the existing infrastructure. The Directives refer to the financial plan or “any equivalent instrument”. The latter term must be interpreted restrictively in the sense that only instruments that are functionally equivalent to a financial plan, but which according to the applicable national terminology are not denominated a “financial plan”, may be subject to approval of the vertically integrated undertaking.

³² See Article 26 (2)(c) of the Third Gas Directive 2009/73/EC.

The Directive³³ require the DSO to establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded and to ensure that observance of this prohibition is adequately monitored. The main purpose of a compliance programme is to provide a formal framework for ensuring that the network activities as a whole, as well as individual employees and the management of the DSO, comply with the principle of non-discrimination.

The compliance programme contains rules of conduct which have to be respected by staff in order to exclude discrimination. Such rules relate, for example, to the obligation to preserve the confidentiality of commercially sensitive and commercially advantageous information³⁴. The compliance programme may lay down in detail the kind of information that is to be considered confidential in this sense and how the information should be treated. It may also refer to the sanctions imposed under national legislation in case of non-respect of confidentiality rules. Another set of rules which, for example, can form part of a compliance programme relates to the behaviour of staff vis-à-vis network customers. Employees of a DSO must refrain from any reference to the related supply business in their contacts with customers of the DSO.

The compliance programme must be actively implemented and promoted through specific policies and procedures. Such policies may consist, inter alia, of the following elements: (a) active, regular and visible support of the management for the programme, for example through a personal message to the staff from the management stating its commitment to the programme; (b) written commitment of staff to the programme by signing up to the compliance programme; (c) clear statements that disciplinary action will be taken against staff violating the compliance rules; (d) training on compliance on a regular basis and notably as part of the induction programme for new staff.

The Gas Directive³⁵ require the DSO to appoint a compliance officer. The compliance officer must be fully independent and must have access to all the necessary information of the DSO and any affiliated undertaking to fulfil his or her

³³ See Article 26 (2)(d) of the Third Gas Directive 2009/73/EC.

³⁴ See Article 27 of the Third Gas Directive 2009/73/EC.

³⁵ See Article 26 (2)(d) of the Third Gas Directive 2009/73/EC.

task. There is a clear obligation of result. When shaping the specific rules, and guarantees for independence of the compliance officer of the DSO, the rules on the compliance officer of the ITO as laid down in the Gas Directive³⁶ may serve as a point of reference, where appropriate.

If the programme is to be successful, its effectiveness needs to be regularly monitored. This is essential not only as a means of ensuring that the programme is working properly but also to enable the identification of those areas that present the highest risks of non-compliance. The evaluation process must be carried out in a transparent manner, and may indicate to employees that their conduct is being reviewed against the terms of the compliance programme on a continuous basis. The compliance officer must on a yearly basis submit a report to the national regulatory authority, setting out all the measures taken. This report must be published.

The Directive also³⁷ require that where the DSO is part of a vertically integrated company, Member States must ensure that the activities of the DSO are monitored by regulatory authorities or other competent bodies so that the DSO cannot take advantage of its vertical integration to distort competition. The DSO in its communication and branding cannot create confusion in respect of the separate identity of the supply company of the vertically integrated undertaking. This implies a general obligation to avoid any confusion for consumers between the DSO and the supply company. In order to identify whether or not there is confusion in a particular case, European Union trade mark law may serve as a point of reference.

The rules on functional unbundling are supplemented with the obligation of DSOs to preserve the confidentiality of commercially sensitive information obtained in the course of carrying out their business, and with the obligation of DSOs to prevent information about their own activities which may be commercially advantageous being disclosed in a discriminatory manner. This means, for example, that personnel working for the supply business must not have privileged access to databases containing

³⁶ See Article 21 (2) of the Third Gas Directive 2009/73/EC and the Interpretative Note of the European Commission on Directives 2009/72/EC and 2009/73/EC, The Unbundling Regime, 22.01.2010.

³⁷ See Article 26 (3) of the Third Gas Directive 2009/73/EC.

information that could be commercially advantageous, such as details on actual or potential network users³⁸.

The provisions on accounting unbundling in the Electricity and Gas Directives remain largely unchanged as compared to the preceding legislation. The basic principle³⁹ is that companies have to keep separate accounts for each of their transmission and distribution activities related to electricity and gas. Consolidated accounts are possible for all other activities, including their remaining electricity and gas activities.

Unlike legal and functional unbundling, no derogation is possible from the rules on accounting unbundling in the case of smaller DSOs. Accounting unbundling is thus the minimum separation requirement to be respected by every network operator, without exception.

For accounting unbundling, an accurate application of accounting principles is of fundamental importance. It is vital that cost items are allocated in a transparent and accurate manner to the activities concerned. Notably, any overstatement of the costs of the network business must be excluded. Such inaccurate cost allocation is likely to lead to cross-subsidisation favouring the supply business and thus distorting competition in the supply market.

It should be noted that regulatory authorities play a key role in this respect, in view of their duty to ensure, through monitoring effective accounting unbundling, that there are no cross subsidies between, on the one hand, transmission and/or distribution and, on the other hand, generation and/or supply.

Smaller DSOs serving less than 100,000 connected customers can be exempted from the requirements of both legal and functional unbundling⁴⁰. This possibility of an exemption is not limited in time.

3.2 The Greek Energy Act

The L. 4001/2011⁴¹ on the *“Operation of the energy markets of Electricity and Natural Gas, for research, production and transmission networks of hydrocarbons and other*

³⁸ See Article 27 of the Third Gas Directive 2009/73/EC.

³⁹ See Article 31 (3) of the Third Gas Directive 2009/73/EC.

⁴⁰ See Article 26 (4) of the Third Gas Directive 2009/73/EC.

arrangements” replaced L. 3428/2005 and incorporated the provisions of the Third Energy Package into national law. The activities of production, supply, transportation and distribution of natural gas and of storage and liquidation of natural gas and of regasification of liquefied natural gas within the Greek territory are exercised in accordance to the provisions of this Law.

Amongst its main provisions, the law stipulates the unbundling of the system operators and enhances the role of the independent regulator regarding energy security, licensing, monitoring of the market and consumer protection. In addition, this law amends L. 2289/1995 on “Prospecting, exploration and exploitation of hydrocarbons and other provisions”.

Regarding the distribution activity within the former EPAs designated areas, Attiki, Thessaloniki and Thessalia, the law confirms the derogation from the provisions regarding legal and functional unbundling, customer eligibility and tariffs, under the specific provisions of the distribution licenses issued in 2000 and 2001 for the three former EPAs, according to L. 2364/1995.

The operation, maintenance, exploitation and development of the Greek transmission system (National Natural Gas System, NNGS) is realized by the transmission system operator DESFA S.A. under the provisions of the National Natural Gas Operation Code⁴², as amended by RAE’s Decision⁴³. RAE approved⁴⁴ the contracts for the Transmission of Natural Gas and Usage of the LNG Terminal which were submitted by DESFA. In order to conduct such contracts, a company must be registered in the Users’ Registry⁴⁵.

Finally, the rules, the minimum accuracy specifications of measuring devices, the procedures, the processes and any other detail about the measurement of natural gas and National Natural Gas System users’ access to measuring devices are specified in the National Natural Gas System Measurement Regulation⁴⁶.

⁴¹ Official Gazette A’ 176/22.08.2011.

⁴² Official Gazette B’ 379/01.04.2010.

⁴³ Decision No. 1096/2011, Official Gazette B’ 2227/11.04.2011.

⁴⁴ See RAE’s Decision No. 126/2012, Official Gazette B’ 907/23.03.2012.

⁴⁵ See the National Natural Gas System Users’ Registry Regulation in Official Gazette B’ 451/16.04.2010.

⁴⁶ See Ministerial Decision no. D1/A/7754, Government Gazette B 584/06.05.2010.

Regarding access tariffs, from 1st February 2013, the entry-exit tariff system enters into force which was established by the Tariff Regulation of core activities of the National Natural Gas System⁴⁷. The entry-exit tariffs are specified in RAE's Decision No. 722/2012⁴⁸.

The Licensing Regulation⁴⁹ covers the type and content of applications for the granting, amendment and revocation of the following licenses required for the conduct of the relevant activity in natural gas market, i.e. Natural Gas Supply License, Independent Natural Gas System License, Independent Natural Gas System Operation License, and Natural Gas Distribution License.

The above secondary legislation, along with L. 4001/2011, constitute the legal and regulatory framework under which the natural gas market operated until 2015.

⁴⁷ Official Gazette B' 2093/05.07.2012.

⁴⁸ Official Gazette B' 2385/27.08.2012.

⁴⁹ Official Gazette B' 464/19.04.2010.

Chapter 4 – The Recent Developments in the Legal Framework in Greece

On 14th August 2015, the Government passed the L. 4336/2015⁵⁰, known as the “Third Memorandum” between Greece and its creditors. Several articles of the Law were amendments to the Energy Act 4001/2011, and aimed at the liberalization of the natural gas distribution and supply activity in all areas of Greece.

4.1 The L. 4336/2015

The legislation was first put in public consultation by the Ministry for Environment, Energy & Climate Change in October 2014, before the change of Government in January 2015. It was finally passed by the Greek parliament in August 2015, with minor changes in comparison to the draft, under extreme political pressure to conclude the third bailout program of Greece.

The provisions of the law amend and supplement L. 4001/2011 so that the retail natural gas market in Greece adjusts to what applies in other member states. To this end, the unbundling of the gas distribution companies (“EPAs”) is set out to be implemented in a way equivalent to what happened with the high-pressure gas transmission system and the establishment of the Natural Gas Transmission System Operator DESFA S.A.

In particular, the legislation provides that the construction of Distribution Network is allowed to those granted a Distribution License, while the management and operation of Distribution Networks is allowed only to those that have a Distribution Network Operating License granted. The Distribution Network Operator has to develop its distribution network, with assets of the Distribution License owner. The licenses are granted following relevant applications, according to the License Regulation, with RAE decision.

Further to the above, Article 80 of the law lays down the rules for the independence of the DSO, at least in terms of legal form, organization and decision-taking. The law provides further that the Distribution Network Operating license holder shall prepare and apply a compliance program setting out the measures taken

⁵⁰ Official Gazette 94/A'/14.08.2015.

to prevent any discrimination in favour of the vertically integrated undertaking and to safeguard due monitoring of adherence to the program. All relevant provisions of the law are in accordance with the Third Gas Directive.

In addition, a set of conditions and the procedure for the granting of the above licensed as well as the obligations that the Distribution Network Operator bears. Pursuant to the new law, a Distribution Network Operation Code, a distribution measurement regulation and a distribution tariff regulation have to be issued by RAE.

The DSOs have to prepare 5-year development programs and submit them to RAE for approval in accordance with the Distribution Code. With the development plan the operator sets out the procedures and conditions for network development, taking into account the evolution of demand needs connecting new users, the needs to improve their efficiency, the operational safety and quality of services of the operator, the application of new technologies and uniform as possible, standards and the environmental protection. The Initial Development Plan is submitted with the application for granting of the Distribution License.

The requirements of accounting, functional and legal unbundling as set forth by the Third Gas Directive were provided for by the law. Until the 30th May 2016, DEPA S.A. and EPA Attiki, Thessalia and Thessaloniki were required to submit to RAE for approval the principles and rules of distribution for separate accounting of their activities. From 1st January 2016, they were required to keep in their internal accounting separate accounts for each of the activities of distribution, supply for eligible customers, supply to non-eligible customers, and the provision of utilities and last resort. In addition, until 1st January 2017, EPA Attiki, Thessaloniki and Thessalia were required to proceed to the legal and functional unbundling of the distribution activity of gas networks in Attiki, Thessalia and Thessaloniki from their other activities, with the contribution of each distribution sector during the establishment stage of a new Gas Distribution Company (“EDA”). EPA Thessaloniki and Thessalia could contribute together the distribution branch of each of them, at the establishment stage of a common EDA. DEPA was also required to proceed to the unbundling of the activity of management of the Rest of Greece Distribution Network from other activities of the vertically integrated company, with the contribution of the distribution

sector, establishing a new EDA. The corporate transformations are legally treated as equivalent to universal succession.

The legislation also provided for shared services for a period of 3 years from the launch of each EDA, in order to facilitate the development of the new entities, after the approval of these by RAE.

Distribution networks that had been constructed, in the context of distribution licenses issued under the provisions of L. 2364/1995, are owned solely by DEPA. Distribution networks expansion works implemented by the EDAs are owned solely by the EDAs.

Within three (3) months of their establishment, EDAs which derived from the former EPAs are obliged to apply to RAE for granting of a Distribution License and a Distribution Network Operating License. These licenses have a duration of at least 20 years, with a possible extension for 20 more years. The licenses are for the areas that the former EPAs were already granted with distribution licenses, according to L. 2364/1995. However, for specific areas within the geographical limits where there has been granted a Distribution Network Operating License and which are not included in the approved development plan of the Network or are included, but eighteen months have elapsed without having completed the network development, any interested party, who meets the requirements of the Licensing Regulation, may apply to RAE for the grant of a Distribution License and a Distribution Network Operating License for Network development in the specific area.

With the issuance of the new Distribution Licenses, the provisions of Distribution Licenses granted under the provisions of Law. 2364/1995 were provided to be cancelled. Within six (6) months from the issuance of the Distribution License to EDAs supply license is granted to EPAs. Until the issuance of the supply license of the previous sentence to EPAs, the former EPAs carry the activities of supply to customers who become eligible.

One of the Draft Law's main purposes is setting the timeframe for the opening of the national gas market through the progressive transition of all gas consumers to the status of "eligible", meaning free to choose supplier. The Law imposed the transition to full eligibility of, initially, all gas customers in areas outside Attica, Thessaloniki and Thessalia, and of commercial customers, within these territories, with

a consumption threshold of 2.2 GWh per consumption site. Furthermore, all non-household customers were designated to become eligible to choose their supplier by January 2017 and eventually, by January 2018, all customers will be “eligible” to choose their supplier. Until full transition to the stage of eligibility, these consumers continue to be supplied with natural gas by the three former EPAs.

The EPAs were also acknowledged as eligible customers for supplying other eligible customers, thus entitled to participate to the natural gas e-auctions conducted by DEPA.

Natural gas supply to non-eligible customers by EPAs is conducted under regulated retail pricing approved by RAE, upon the recommendation of EPAs, which had to be submitted to RAE until October 31st, 2015.

According to the final and transitional provisions of the law, within three (3) months of its entry into force, DEPA SA, as Distribution Network Operator for the Rest of Greece, and EPA Attiki, EPA Thessaloniki and EPA Thessalia as operators of the Networks in the respective geographical areas, had to propose to RAE, which after public consultation and after RAE proceeds to modifications and amendments, is obliged to issue the final documents within three months after the submission date (a) for the issue of Tariff Regulation of these Networks, (b) for the issue of Distribution Network Operation Code. Within one month of the entry into force of the Tariff Regulation DEPA SA, and the three former EPAs had to submit for approval to RAE the distribution tariffs. It was also provided that, from the time of its entry into force, up to the time of entry into force of the approved and published distribution tariffs, the tariff for the provision of distribution services to system users was four (4) Euro per MWh.

Based on the above, the law *de facto* cancels the above-mentioned derogation granted to Greece. The previous distribution licenses are cancelled and the three former EPAs, despite they had been network operators for 16 years, have to apply for new licenses. On top of that, exclusivity is eliminated, even for the distribution activity within these areas, despite the fact that the distribution activity is considered a “monopolistic” activity within specific geographical limits. Furthermore, distribution tariffs are determined exclusively under regulatory control, calculated based on published methodologies and are published before their entry into force, exactly as

the European Directives provide for. In addition, the law requires the full unbundling of activities, in compliance with the Third Gas Directive.

4.2 Amendments of L. 4336/2015

It is common knowledge that the law was so quickly passed, under extreme pressure for a new MoU, that it soon became obvious that certain amendments would be required.

Specifically, some provisions of the law could cause problems, delays or include unclear meanings that would constitute an obstacle in the implementation process. The amendments proposed and finally passed by the Greek parliament did not affect the spirit of the law or the intended purpose but they concerned specific matters or details, corrections that contributed to a proper and more direct implementation of the provisions of Law.

The proposed amendments were reasonable and necessary with a view to finalize the desired changes in the regulatory framework of liberalization of the retail natural gas market in Greece, in the best possible way and within a strict timeframe. The amendments proposed introduced necessary changes, in order for the reform of the regulatory framework for the liberalisation of the natural gas market to be completed within the stipulated period of time. Since the procedure of the mandatory legal and functional unbundling required a significant period of time to be completed, the bodies involved should have had flexibility and alternatives solution, in order to complete this procedure without changing the initially intended purpose of the Law.

Spin-off of supply branch, instead of distribution branch, as editing of L. 4336/2015 provides for, presents major benefits from a legal, economic and operational viewpoint, since: (a) elements that constitute the supply branch are similar, so their unbundling becomes easier, (b) supply branch does not include rights of operation or rights of use of the distribution network of natural gas in relation with which legal or operational issues often emerge (as previous experience of unbundling of the distribution branches in power market shows), (c) in case of EPA Thessaloniki, EPA Thessalia and EPA Attiki, supply sectors employ less employees comparing with the corresponding branches of Distribution with the result that the transfer of work

relationships is easier, (d) works of legal and economic unbundling is due to be developed faster and more effectively, if supply branch is unbundled from the companies instead of the distribution branch. From the above, it is concluded that, possibility of legal and functional unbundling would be excessively useful through the spin-off of supply branch. For the realisation of the above proposal, legal improvement of L. 4336/2015 is proposed, so as possibility of spin-off of supply branch is expressly provided for at the same time with spin-off of distribution branch. It is indicated that both possibilities lead to the same effect, i.e. to a legal and functional unbundling of the two activities. Therefore, purpose of L. 4336/2015 is the public interest to be fulfilled, and at the same time realisation of spin-off is ensured in an effective and economically efficient manner, taking into consideration the particularities of the companies trading in natural gas market. For the above reasons, a particular proposal was submitted for voting for a particular legislative provision concerning amendment of paragraphs 3, 5, 6, 8 and 17, article 80A of L. 4001/2011.

So, it was proposed that the former EPAs could alternatively choose to spin off the supply branch instead of the distribution branch, as L. 4336/2015 provided for, while the remaining distribution branches was proposed to be transformed into DSOs.

Further to the above, under the provisions of L. 4336/2015, there was a possibility that the new EPAs could be stripped of the capability to supply natural gas to customers under the provision regarding the cancellation of the licenses issued in 2000 and 2001, it was proposed that once the new Distribution Licenses provided for in the provisions of Article 80C of L. 4001/4011 would be issued, the arrangements of the Distribution Licenses granted by virtue of the provisions of L. 2364/1995 would be automatically cancelled only insofar as they relate to the operation of the Distribution Network. These licenses would continue to apply in respect of the supply of natural gas until the issuance of the new Supply Licenses to the new EPAs for administrative reasons.

The L. 4336/2015 was amended three times, namely with the laws 4337/2015⁵¹, 4414/2016⁵² and 4425/2016⁵³. Most of the above proposed amendments were included in L. 4414/2016.

⁵¹ See Official Gazette 129/A'/17.10.2015.

⁵² See Official Gazette 149/A'/09.08.2016.

4.3 A Critical View on L. 4336/2015

As mentioned, in 2000 EPA Thessaloniki S.A. and EPA Thessalia S.A. and in 2001 EPA Attiki S.A. were granted with distribution licenses, thus becoming operators of the relevant distribution networks of their geographical areas. In addition, they were granted with the exclusive rights to supply gas to non-eligible customers of these areas, for a 30-year period. The purpose of this granting was the development of the distribution network within the geographical areas of the EPAs, which would not have been achieved if the relevant exclusive rights hadn't been granted. The private investors who were awarded after the tenders, paid the amount of their shareholding to EPAs.

For the functioning of the above exclusive rights, the State requested and received from the European Commission, a derogation from the application of the segregation rules for the opening of the market to Customers and the approval of the tariffs of the network, as an emerging gas market, as provided in the relevant EU legislation. This derogation was in force until the voting of L. 4336/2015 with explicit references to the perpetual EU legislation, regulating gas markets.

For the overall performance of the obligations that the investors undertook on the basis of the tender, the investors prepared a specific business plan covering a 30 year period, corresponding to the duration of the exclusive distribution rights, as foreseen by the actual legal framework, and was obviously entitled to expect the return on this investment, based on the rules of economic principle, under the regulatory framework for which the State was expressly committed by issuing the relevant Law, at the time of conducting the tenders, as above, but also by signing the relevant agreements, by which the investment was realized. This, as in all investments, was the foundation of the investment decision of investors to participate in the tender, in the sense that in the absence of this law no implementation of the relevant legislation would have been achieved.

⁵³ See Official Gazette 185/A'/30.09.2016.

The provisions⁵⁴ of L. 4336/2015 proceeded in fact to a violent cancellation of the granted distribution licenses, which were joint (tied) licenses for both activities; distribution and supply of natural gas. This cancellation was achieved by the unilateral action of the State, without the consent of the beneficiaries and without any prior reason of those provided for in the license that could justify a likely revocation.

The State is entitled to do so, for reasons of public interest. However, in the actual administrative system under the rule of law, that premature termination of the licenses, without the relevant compensation is not tolerated, neither by the Greek Constitutional order, nor by the European Treaties⁵⁵. Consequently, the discretion of the Greek government to change the legislation, under which rights have already been acquired and by considerable private expenditure of the investors, is confined and limited by national constitutional⁵⁶ and supra-national rules that protect fundamental rights such as the right to property, ownership and free enterprise activity. In this case, there is an opposition of a Law to adjacent and prevailing rules of law, such as the Constitution and the supra-national commitments. Thus, the liability of the Greek State to compensate can be established.

The unilateral deprivation, of both the secure income and the unamortized value of assets that would result from the activity of the EPAs for the remaining time, until the expiration of the licenses, i.e. 2029 for EPA Thessaloniki and EPA Thessalia and 2031 for EPA Attiki, constitutes a classic case of violation of the principles of the legitimate expectation of citizen and the legal certainty. Furthermore, for many years the investors could have reasonably form a belief, both through EU legislation, under an explicit derogation regime and the respective national, by which they established the legitimate expectation that the State and the European Commission, while respecting the general and specific principles of the rule of law would not reverse the existing legislative and regulatory framework in violation of those principles. Indeed, in this case, the new legislation didn't consider any measures regarding the injurious effects of the termination of the distribution licenses and the loss of the expected income during the ordinary circumstances of the activities of the EPAs. The above

⁵⁴ See chapter A of subpar. B.1. of par. B in Part B of L. 4336/2015.

⁵⁵ See European Convention on Human Rights.

⁵⁶ See Article 17 of the Constitution.

behaviour of the State may cause civil liability and compensation for the total loss, which should be based in a detailed and defined manner, with a possibility of claiming a compensation.

Of course, one would expect that the objection of the State will be the “public interest”, but this does not affect the claim for compensation.

Furthermore, in the explanatory memo submitted by the government to the Chairwoman of the Parliament at the time, it was mentioned: *"The separation is firstly accounting and therefore it does not burden the state budget. Any requirements that may result from EPAs' exclusive right to supply under their derogation and the expiry of their licenses before the completion time of their licenses will be settled in the negotiations for the separation of the EPAs."*

The Law did not take into consideration essential rules and rights provided by the concession licenses granted to the EPAs in 2000 and 2001, and provided no protection to the operations and the value of the EPAs. Therefore, a set of mitigating measures should have been taken into account, to be implemented in order to offset the impact on the EPAs of the new regulatory frameworks, in comparison with the one provided by the distribution licenses granted in 2000 and 2001. No such provisions have been included in L. 4336/2015.

Until the present day, the matter of these mitigating measures is open and remains to be finalised between the Ministry and the companies. Actually, the case might be that, because of the issue of compensation of the stakeholders, DEPA, ENI and Shell, the final cost of liberalization might not be insubstantial after all, should there be undesirable claims/disputes by the investors towards the Greek state.

A possible solution for the possible contradiction would be a process, under which a business assessment could be conducted by an independent advisor to the companies and the State, in order to determine the impacts, in terms of operations and economic value on the EPAs, because of the unexpected change of the legal and regulatory framework. Secondly, the stakeholders could reach an agreement for possible mitigating or compensating measures, and possibly where needed, relevant legislation could be passed, with respect to the European legislation for state-aid and to competition law.

Further to the above, following the voting of the legislation in August 2015, major concern has been raised by the energy intensive industrial sector⁵⁷, because of the provision for the interim distribution tariff of 4 €/MWh, until the final distribution tariffs would be approved by RAE. However, this provision has not been yet legally challenged by the industrial sector.

In addition, the Law does not provide a clear definition for the Distribution License and the Distribution Network Operating License. It is not clear why the legislator provides for two separate licenses for the distribution activity. It may be argued that this scheme resembles the ISO model of the transmission activity. Others have debated that this provision was included in the law to boost investments in the distribution networks. The law was problematic, in the sense that it complexes tasks and responsibilities. A detailed description of obligation/responsibilities both for Distribution Licensee and the Distribution Network Operating Licensee should be provided, so that the distinction between the two Licensees is clear. This specific issues is expected to be finalized after the amendment of the Licensing Regulation. However, it should be noted that no other example of dual licenses has been recorded in European countries that implemented the Third Liberalization Package.

On top of that, there is reference in the Law to a new Supply Code to Customers, but no provision for the date or procedure to issue. The law should provide for the minimum content of the Supply Code and that, in particular, the process of switching should be regulated. The issue of the Code is an urgent matter, in view of the full eligibility of all consumers in the next year.

4.4 Implementation of the Law and Challenges thereof

According to the Law⁵⁸, until the 1st January 2017 the EPAs were obliged to proceed with the legal and functional unbundling of the operation of the Natural Gas

⁵⁷ See relevant articles “Industrial sector faces instant gas hikes as part of bailout deal”, “Industry reacts strongly to sharp gas distribution fee hike”, “Industrial group seeking gas distribution hike changes”, available at <http://energypress.eu/industrial-sector-faces-immediate-gas-hikes-as-part-of-bailout-deal/>, <http://energypress.eu/industry-reacts-strongly-to-sharp-gas-distribution-fee-hike/>, <http://energypress.eu/industrial-group-calls-for-changes-to-gas-distribution-hike/>

⁵⁸ See article 80A of L. 4001/2011, as amended by L. 4336/2015 and L. 4414/2016.

Distribution Network, from the other activities, with the contribution at their discretion either of the Distribution branch or the Supply branch of each of them.

The companies indeed concluded the unbundling, through the spin-off of the Supply branch of each EPA. For the areas of Thessaloniki and Thessalia, the corporate bodies of the companies decided also the contribution of the respective supply branches to a new joint company, which will operate in the natural gas supply activity for all the Greek territory. In addition, they decided that the two distribution branches are merged to a new Distribution System Operator for both areas, Thessaloniki and Thessalia⁵⁹. In Attiki, the supply branch was also spun off, thus forming the supply company EPA Attiki gas supply company, and EDA Attiki, the DSO for Attiki area. A next and final step for the conclusion of the unbundling process, is the transfer of shares that the contributing companies hold in the newly established companies to their shareholders⁶⁰.

For the rest of Greece, DEPA proceeded with the spin-off of the distribution sector, thus forming the DSO DEDA. DEPA will continue its activity as wholesale gas importer, supplier of the EPAs, majority shareholder of the EPAs, and also, competitor of the EPAs in the supply activity of eligible customers. The above create indeed a challenging market structure, especially in the supply activity, but also in terms of respecting the rules of functional unbundling by all stakeholders.

Moreover, the implementation of the Law presents significant challenges on a regulatory level as well.

In accordance with the Law, the former EPAs submitted to RAE a proposal in October 2015 on the regulated Tariffs for the supply of natural gas to non-eligible Customers. Nonetheless, until today, RAE has not yet issued a decision on the regulated supply tariffs to be applied to non-eligible customers for 2017.

Furthermore, in accordance with the Law, a proposal was submitted to RAE in November 2015 regarding the issuance of the Distribution Network Operation Code. The law provided for the Code to be issued within three months from submission, after public consultation. However, and despite that the competent DSOs are already operating, the regulatory authority has not yet issued the Code.

⁵⁹ See provisions of par. 9 of art. 80A of the Law.

⁶⁰ See article 80A par.4 of L.4001/2011.

The former EPAs also, according to the Law, submitted to RAE a proposal in November 2015 regarding the issuance of the Tariff Regulation of the Distribution Network. The law provided for the Regulation to be issued within three months from submission, after public consultation. The regulation was issued in September 2016⁶¹, along with the decisions of RAE regarding the regulated distribution tariffs⁶² in late October 2016.

In addition, as per the provisions of the law, as of 1-1-2016, separate accounts were kept for the distribution and supply of natural gas, while the former EPAs submitted the principles and rules of allocation for the accounting unbundling for approval on 30/05/2016, as the law provided. The law stipulated that RAE must decide on this matter within three (3) months from submission. However, the relevant decision of RAE was issued in November 2016⁶³.

The companies also submitted, in accordance with the Law, a proposal to RAE on the drafting of the measurements regulation. Despite that RAE, following a public consultation, was obliged to adopt the final text within three (3) months from the time of submission, the regulation has not been yet issued until the present day.

Furthermore, according to the Law, within six (6) months from the entry into force of L. 4336/2015, the Natural Gas License Regulation should have been modified in adjustment to the provisions of L. 4336/2015. RAE announced the public consultation regarding the modification of the Natural Gas License Regulation, and the EPAs submitted proposals in August 2016. Yet, until today the Regulation has not been yet modified. In this context, the DSOs have not yet applied for the granting of distribution licenses and distribution network operation licenses, nor have they submitted their five-year development programmes to RAE for approval.

⁶¹ See Official Gazette 3067/B'/26.09.2016.

⁶² See Official Gazette 3490/B'/31.10.2016 and 3537/B'/03.11.2016.

⁶³ See Official Gazette 3763/B'/22.11.2016.

Chapter 5 – Conclusions

After a long road, and under specific derogations granted to Greece by the European legislator, Greece's natural gas retail market is under a liberalization process, that began in 2015, under the provisions of L. 4336/2015, based on the terms of the country's bailout agreement.

The Greek model complies now with the EU's third energy package, aiming to gradually offer consumers the ability to choose supplier and reduce energy costs. Greece is in the process of becoming part of a harmonized European energy market, opening up the local gas retail market to competition.

The objective of the law and its amendments was to separate the natural gas supply and distribution activities. The country's three - today former - EPAs with regional monopolies in the areas of Attiki, Thessaloniki, and Thessalia, who controlled both trading and local distribution networks management, were obliged to proceed with the accounting, functional and legal unbundling of their activities, much like the unbundling process, that was already concluded for the transmission system operator.

The process for the retail gas market's liberalization is expected to be completed in 2018, when all customers will be eligible. It is expected that the process will draw new companies into the competitive gas supply market.

The implemented reforms bring major changes to the national natural gas landscape. The removal of local monopolies in the gas market is expected to bring about positive effects not only on the competitiveness of the energy intensive industry sector but on the welfare of households as well. Besides the right of access to alternative suppliers through the elimination of restrictions and the unbundling of network development and maintenance from supply, the growth of the distribution networks and the promotion of the use of gas as heating fuel are expected to complete the reform.

The whole process has formed a challenging new environment for all market stakeholders. New distribution system operators are now under strict regulatory oversight, operate under a new specific licensing scheme and with regulated tariffs. The newly constituted gas supply companies face challenges to change their corporate mentality, after operating 15 years with no competition. The regulatory authority will

need to monitor the process and function of the market, while observing the requirements of the law and relevant dates to issue the distribution and supply codes, and regulations. The Greek state will need to address the issue of compensating the former EPAs for the unilateral and unexpected cancellation of the previous distribution licenses. Finally, the Greek consumers will be challenged to adjust to a new competitive environment, reaping the fruits of the liberalization of the gas market in their favour.

Bibliography

- Academy of Athens*, The Production of Electricity in Greece, 2011.
- Academy of Athens*, Greek Hydrocarbons, 2012.
- Academy of Athens*, Renewable Energy Sources, 2014.
- Baldwin R.* (etc.), The Oxford Handbook of Regulation, Oxford University Press, 2010.
- Bunter M.*, The Promotion and Licensing of Petroleum Perspectives Acreage, Kluwer Law, 2002.
- Cameron P.*, Legal Aspects of EU Energy Regulation, Oxford University Press, 2005.
- Cameron P.*, Competition in Energy Markets, Oxford University Press, 2nd Edition, 2007.
- Delvaux B.*, (etc.) EU Energy Law and Policy Issues, Euroconfidentiel, 2003.
- Farantouris N.*, Energy, Nomiki Vivliothiki, (3 volumes), 2013.
- Farantouris N.*, Hydrocarbon Law, Nomiki Vivliothiki, 2015.
- Heffron R.*, Energy Law: An introduction, 2015, Pringer Editions, 2015.
- Gilbert R./E. Kahn*, International Comparisons of Electricity Regulation, Cambridge, 1998.
- Gordon G.* (etc.), Oil and Gas Law, Dundee University Press, 2011.
- Jones C.*, EU Energy Law, Claeys & Casteels, 2nd Edition, 2006.
- Martinez F. C.*, The EU Energy Market Regulation Puzzle: Is There Still a Way Out? The Case for a Fourth Energy Package Along Completely Different Lines, Renewable Energy L. & Poly Rev 121, 2014.
- Maugeri L.*, The Age of Oil, Praeger, 2006.
- Maugeri L.*, Beyond the Age of Oil, Praeger 2010.
- Newbery D.*, Privatization, Restructuring and Regulation, MIT Editions, 1999.
- Oyewunmi T.*, Energy Security and Gas Supply Regulation in the European Union's Internal Market, Eur. Networks L. & Reg. Q. 187, 2015.
- Panagos Th.*, The Legal Framework of the Energy Market, Sakkoulas Editions, 2012.
- Panagos Th.*, The Unbundling of the Companies in Energy Sector, Sakkoulas Editions, 2011.
- Panagos Th.*, Hydrocarbon Exploration and Exploitation, Sakkoulas Editions, 2014.
- Piebalgs A.*, Europe's New Energy Policy, Claeys & Casteels, 2009.

Roggenkamp M. (etc), Energy Law in Europe, Oxford University Press, 2001.

Semkou A., The Unbundling of the Transmission System Operator in Electricity Sector. The Greek Case of Admie, IHU, 2015.

Xeniti A. E., Country Reports, Greece, The Natural Gas Sector in Greece: A Long Road to Liberalisation, Eur. Networks L. & Reg. Q. 56, 2015.

Yfantidis T., The Liberalization of the Natural Gas Retail Market in Greece, IHU, 2016.

