LEXOLOGY®
Getting The Deal Through

Energy Disputes

in Greece

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Table of contents

Contributors

Greece

Nicholas Moussas
nmoussas@moussaspartners.gr
Moussas & Partners Attorneys at Law

Maria Malikouti
mmalikouti@moussaspartners.gr
Moussas & Partners Attorneys at Law

Konstantina Theodosaki
ktheodosaki@moussaspartners.gr
Moussas & Partners Attorneys at Law

Stamatia Leontara
sleontara@moussaspartners.gr
Moussas & Partners Attorneys at Law

MOUSSAS & PARTNERS
ATTORNEYS AT LAW

GENERAL

Development

Describe the areas of energy development in the country.

Greece, located at the crossroads between East and West, is uniquely positioned to play a significant role in the broader region's energy markets. The abundance of renewable energy sources (RES), combined with ongoing large-scale infrastructure projects, such as the Trans Adriatic Pipeline, the gas interconnector Greece–Bulgaria, the EastMed pipeline, the Alexandroupolis floating storage and regasification unit and the upgrade and extension of the gas transmission system operator's liquefied natural gas terminal, demonstrates that Greece is emerging as a potential energy hub and plays a pivotal role in the EU energy mix, providing a stable investment environment for investors in the energy sector.

With respect to the electricity generation, there is no dominant fuel, since natural gas represents 33.96 per cent, coal 33.90 per cent and the remaining is attributed to RES (21.58 per cent) and hydroelectric stations (10.6 per cent).

Further, Greece has been self-sufficient in electricity generation, covering most of its domestic demand through either lignite or RES production. In comparison with the 1990s, the dominance of fossil fuels in Greece has decreased. Lignite has historically played an important role in domestic electricity production, but its output has been steadily declining due to the increasing penetration of RES as well as natural gas. To this effect, the country has implemented a programme to gradually cease the use of lignite (lignite phase-out). An impressive increase in electricity generation through RES has been observed, especially through the construction of wind and photovoltaic parks and also from hydroelectric units and biomass.

With respect to oil and gas Greece covers the majority of its needs through imports, mainly owing to the minimal domestic production. Meanwhile, Greece is exploring the existence of hydrocarbons, aiming to promote the country's energy security.

Role of government

Describe the government's role in the ownership and development of energy resources. Outline the current energy policy.

The Greek government and, in particular, the Minister of Environment and Energy, sets the national energy policy.

Improvement of energy efficiency in terms of security, economy and environmental protection (eg, through the adoption of interruptibility schemes and the transitory electricity flexibility remuneration mechanism to address potential electricity supply shortage), a growing output by renewable energy and gas and the assurance that consumers receive reliable and equitable energy products count over time among key points on the policy agenda. Further, the Regulatory Authority for Energy (RAE), an independent monitoring administrative authority established in 1999 (under Law 2773/1999 for the liberalisation of electricity sector), is competent to advise, supervise and regulate all sectors of the domestic energy market. RAE also advises the Minister on long-term energy planning, proposes measures to the state's competent bodies or takes measures in the scope of its competence, which entails disciplining misconducts, imposing of financial sanctions and arbitral resolution of disputes.

Currently, in line with EU energy policy, Greek energy markets are still undergoing liberalisation and fundamental reforms. The driving efforts to liberalise the traditional national monopolies in the electricity and gas markets have led to the unbundling of key energy entities, the separation of production and supply from transmission networks and the gradual opening of the markets to competition.

In the electricity retail market, aiming at departing from the Public Power Corporation (PPC) state monopoly, an entity

listed in the Athens Exchange albeit state run through a controlled holding of more than 51 per cent, the market now includes several competing electricity producers gradually building market shares in supplying electricity to households.

In the natural gas market, Public Gas Corporation (DEPA), a gas monopoly whose shares are held in part by the state through the Hellenic Republic Asset Development Fund (65 per cent) and through Hellenic Petroleum SA (35 per cent), still plays a major role in importing and distributing natural gas in the country, while a few competitors have sought to import natural gas in the country as well. Recently, as a result of the market liberalisation, an independent company active in natural gas supply and trading overtook DEPA as a major LNG importer. Moreover, the completion of the gas market impacts on the electricity market, as almost all electricity providers have now entered the gas market to supply consumers with combined gas or electricity packages. DEPA has undergone a first liberalisation shift and is now undergoing a second one, which will ultimately lead to further unbundling of distribution and supply as well as privatisation through the division of DEPA's commercial and infrastructure activities.

In line with European Union's target model, a new law (4602/2019) was recently passed to focus on the completion of the Greek energy market restructuring. The goals are to enhance competition in supply, make distribution networks more efficient and ensure the design and implementation of DEPA's international projects. In parallel, the new provisions fully reorganise the operation of the wholesale electricity market with the launch of the Energy Exchange and the abolition of the mandatory pool model. In the context of the implementation of the target model and towards a single energy market in EU, four new markets replaced the mandatory pool model: (1) the day ahead market; (2) the intra-day market; (3) the balancing market; and (4) the forward market.

COMMERCIAL/CIVIL LAW – SUBSTANTIVE

Rules and industry standards

Describe any industry-standard form contracts used in the energy sector in your jurisdiction.

Codified energy provisions predefine the content of a number of contracts in the electricity sector such as supply contracts, the contracts with the system administrator, trading contracts for the day-ahead market and connection contracts. The same stands for the natural gas sector where the content of supply, connection, transmission, distribution and storage contracts and contracts for the use of LNG infrastructure is equally regulated.

The Public Gas Corporation and the Public Power Corporation (PPC) are members of the European Federation of Energy Traders, which is an alternative source for standard forms for wholesale energy transactions.

What rules govern contractual interpretation in (non-consumer) contracts in general? Do these rules apply to energy contracts?

The general principles of contractual interpretation of the Greek Civil Code (the GCC) also apply in energy contracts. The contractual interpretation starts with the wording of the contract that imprints the will of the parties, which are superseded only if contrary to mandatory rules and principles. Under the GCC the principle of good faith is key for the interpretation and definition of the parties' obligations and performance under a contract (article 197–198, 288), while business usage is also considered. Further, article 281 GCC decrees a general ban on the abusive exercise of all rights, that is, their exercise in violation of the principles of good faith, 'good morals' (bonos mores), and their economic or social purpose. If a contract is opposed to these principles or mandatory provisions of the law, the contract or a contractual term may be found inoperable. In practice, Greek courts and arbitral tribunals that have dealt with (non-consumer) energy disputes, for instance, disputes concerning take-or-pay or price revision clauses in downstream contracts, apply the principle of good faith to 'reshape' the parties' obligations under a contract. In addition, apart from

the general principles for interpretation, courts and arbitral tribunals have drawn in the past decade from specific principles of sector specific energy laws such as the principle of equal terms (https://www.lexology.com/library/detail.aspx?g=57bbd39f-9109-4d40-8f4a-16a2c07d1279) in the vertical chain between upstream and downstream parties (eg, article 24 law 3175/2003) in natural gas supply contracts.

Describe any commonly recognised industry standards for establishing liability.

Energy markets are regulated markets; therefore, energy players must comply with regulatory obligations and observe specific rules, principles and standards set out in sector specific laws, which also set the standards for contractual liability.

For instance, Law 4001/2011 for the organisation and operation of the liberalised electricity and natural gas markets (Energy Law) as well as the Electricity and Natural Gas Supply Codes designate standards of conduct for companies operating in natural gas and electricity sectors (operators, producers, distributors, suppliers) such as negotiating in good faith, fair dealing, non-discrimination, transparency, confidentiality, impartiality, promotion of competition or protection of vulnerable customers.

It derives from the above that non-compliance with regulatory obligations may have impact on civil liability issues. As an example, from the outset of liberalisation, as early as 2008, the PPC had a statutory obligation to negotiate in good faith with its industrial customers to agree on pricing. Complaints on non-compliance with this obligation have given rise to disputes and litigation.

The aforesaid standards of conduct are further qualified by the general rules in Greek civil law, which recognises two principal bases for civil liability, namely contractual and tort liability. As to the degree of fault, the law provides for wilful misconduct or negligence, light or gross (fault-based liability). Only liability for slight negligence can be contractually excluded.

Performance mitigation

Are concepts of force majeure, commercial impracticability or frustration, or other concepts that would excuse performance during periods of commodity price or supply volatility, recognised in your jurisdiction?

Under Greek law, a party cannot be forced to do the impossible, even if this was promised in contract.

The concept of force majeure is recognised in Greece and is interpreted as an unforeseeable event beyond the control of the parties, which cannot be prevented even after exercising extreme diligence. In such cases, the parties are released from the obligation to perform (336, 342 and 380 GCC). The recent coronavirus outbreak, for instance, if deemed constituting a significant disruption of supply markets at the energy sector may be invoked as a force majeure incident in conjunction with specific contractual terms on an ad hoc basis. However, parties may agree that certain events constitute force majeure events resulting to release of liability under the principle of the freedom to contract.

Greek law further knows the general concept of unexpected changes in circumstances following unforeseeable and unpredictable events (article 388 GCC), which has been widely invoked and applied by courts in the midst of the latest financial crisis. In the context of unpredictable changes in circumstances, the court may intervene and ‘adapt’ the parties’ obligation to the circumstances or even release the parties from obligations. Changes in circumstances (including commodity price or supply volatility) may also lead parties to settle on this basis.

The rule of discharge by impracticability (ie, when the cost of performance for one party has increased so dramatically that the original obligation has become economically unviable) is rather a common law notion not recognised in Greece

that may, however, be viewed on an ad hoc basis under the scope of the principles of good faith and bonos mores and the provisions of GCC 388.

Nuisance

What are the rules on claims of nuisance to obstruct energy development? May operators be subject to nuisance and negligence claims from third parties?

Landowners are obliged to refrain from any nuisance detrimental to neighbouring properties. Harmful effects caused by an activity such as air pollution emissions, noise, vibration, radiation or the deprivation of sunlight are prohibited. The person suffering harm from the former is entitled to file an action against the landowner or the plant operator for damages or request protection against imminent damages. A plaintiff may proceed with a request for injunction relief to halt development or any other activity that does or shall cause nuisance where there is a substantial risk of imminent harm. Also, there are special procedural rules on strategic energy projects accelerating the resolution of the dispute.

Further, third parties with a legitimate interest can proceed with an action against administrative acts such as permits or licences before administrative courts.

Liability and limitations

How may parties limit remedies by agreement?

Liability clauses are common in energy contracts and they may limit, cap or even exclude liability in specific instances. The general rule is that contractual liability may be a priori excluded only for slight negligence. Therefore, a contractual cap on the quantum of damages shall not be considered valid if gross negligence or intention is attributed to the defaulting party (article 332 GCC). However, in the area of state concession agreements, if the defaulting party is the one exploiting a state concession, it cannot be released from any type of liability. Further, liquidated damages and penalty clauses are common in energy contracts. With regard to penalty clauses, if the penalty is disproportionately high, the court may upon a party's request reduce it even if the parties have agreed otherwise (article 404-409 GCC). The Greek legal system does not recognise punitive damages and, if damages of such nature have been agreed, the court may mitigate them to the extent fair and reasonable. Consequential and indirect damages are not recognised by Greek law and, in the absence of a specific agreement thereof, are expressly excluded from indemnification clauses.

Finally, in standard consumer contracts, regulated by the Consumer Law, any clause that limits or excludes the liability of the producer or the supplier of services is null and void.

Is strict liability applicable for damage resulting from any activities in the energy sector?

As a rule, risk entailing activities such as those of operators in energy projects draw strict liability in case of damages. Strict liability may apply where energy sector activities cause environmental damage with significant adverse effects on protected species and natural habitats, water or land under the provisions of the EU Directive 2004/35/EC, which embodies the polluter-pays principle.

Examples include damages incurred from nuclear energy operations (Law 1758/1988, L. 3787/2009), from the pollution of the environment (L. 1650/1986), from oil contamination (L. 314/1976).

General rules on strict liability may also apply to energy projects such liability deriving from the GCC (article 925) in cases of a collapse of a building or a project (eg, wind turbines, solar panels).

Consumer Law also stipulates that any agreement limiting or discharging the service provider's liability towards

consumers is null and void.

COMMERCIAL/CIVIL LAW – PROCEDURAL

Enforcement

How do courts in your jurisdiction resolve competing clauses in multiple contracts relating to a single transaction, lease, licence or concession, with respect to choice of forum, choice of law or mode of dispute resolution?

Competing clauses in the context of a single transaction may raise significant interpretation points for the Courts to address and resolve, especially where the agreements are entered by multiple parties.

The court will assess its own jurisdiction depending on the nature of the dispute in relation to the particular contractual clause and consider its validity. On the choice of forum, the courts shall resort to the provisions of Regulation (EU) No. 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, or where this is not applicable, the Greek Code of Civil Procedure (GCCP) provisions apply. If a party objects competence and claims that an arbitration clause applies, the courts shall assess the objection and if granted, they shall refer the case to arbitration.

Greek courts further recognise choice-of-law clauses and apply conflict of laws rules, mainly, according to the provisions of Regulation (EC) No. 593/2008 on the law applicable to contractual obligations (Rome I) and of the Greek Civil Code (GCC) permitting the contracting parties to choose the law applicable to the contract.

Are stepped and split dispute clauses common? Are they enforceable under the law of your jurisdiction?

Stepped dispute clauses, whereby parties are required to negotiate in advance of any mediation or dispute settlement procedure, are often included in contracts. Split dispute clauses, whereby only one party can decide whether to go to arbitration or to litigation, although not prohibited, are not common. However, an asymmetrical jurisdiction clause may be considered valid if proven adequately and fairly negotiated.

How is expert evidence used in your courts? What are the rules on engagement and use of experts?

One or more experts may be appointed by the court to report on technical issues of the case in dispute (at the request of the parties or ex officio). Experts are appointed by the court from lists of registered experts. The parties are also entitled to appoint, at their own expense, one party-appointed expert each to opine on the court-appointed expert's report. Independent expert opinions may be produced by the parties at their own discretion.

What interim and emergency relief may a court in your jurisdiction grant for energy disputes?

Ordinary procedural rules for interim and emergency court relief also apply for energy disputes in Greece. However, there is also competency of the independent energy regulator RAE, the latter being in parallel competent to hear a case for interim measures in case of Energy Law violations that pose an immediate risk. The Hellenic Competition Commission may also intervene by interim measures in cases of distortion of competition.

Courts or the competent independent authority may order any interim remedy that is deemed most appropriate in connection with the subject energy dispute. Interim measures include the granting of cease orders, the forbearance of certain activities, suspension of a licence, the posting of a guarantee, the conservatory attachment of assets and ordering negotiations or imposing temporary commitments.

What is the enforcement process for foreign judgments and foreign arbitral awards in energy disputes in your jurisdiction?

The general process for the enforcement of foreign judgments and foreign arbitral awards also applies in energy disputes.

The domestic legislation governing the recognition and enforcement of foreign judgments is the GCCP whereby res judicata and enforcement recognition of a foreign judgement is granted by virtue of a judgment of local first instance courts. A foreign judgment will be declared enforceable if it is enforceable pursuant to the law of the country of issuance and not contrary to the good morals or public order of Greece. However, where EU regulations or international conventions and bilateral treaties are applicable, those instruments supersede the national provisions of the GCCP.

Regulation (EU) No. 1215/2012 provides for the enforcement of a foreign judgment of an EU member state in Greece without any prior application before Greek courts. The foreign judgment, along with a form annexed to the Regulation, shall be served on the defendant in Greece and enforced directly, without any intermediate procedure.

The starting point for recognition and enforcement of foreign arbitral awards in Greece is a national law on international arbitration (Law 2735/1999), which dictates that such process shall be conducted pursuant to the New York Convention (Greek Legislative Decree 4220/1961). Foreign arbitral awards are deemed as presumptively enforceable, and the competent court's determination is exclusively constrained in merely declaring the valid presence of the formal conditions contained in article IV of the Convention.

The national court before which a request for recognition and enforcement has been brought may refuse such recognition at the request of the party against whom recognition and enforcement is invoked. Refusal may be granted only if either the negative conditions of the Convention applies entailing issues on the validity of the arbitration agreement, breach of due process as regards the losing party, non-arbitrability, improper constitution of the tribunal or non-enforceability of the award.

Alternative dispute resolution

Are there any arbitration institutions that specifically administer energy disputes in your jurisdiction?

A permanent arbitration forum under the auspices of RAE is in place for disputes between entities active in the energy sector, and eligible customers. This forum serves the need for a speedy resolution of energy disputes, by specialist arbitrators and by a specific set of rules. The arbitration is held before a three-member body, the members of which are selected from a special panel of experts in the field.

Parties may choose to resort to RAE's arbitration mechanism by means of an ad hoc written agreement or the inclusion of a contractual written arbitration clause.

Is there any general preference for litigation over arbitration or vice versa in the energy sector in your jurisdiction?

There is a preference for arbitration mainly in high-profile disputes, either agreed ad hoc or by virtue of arbitration clauses in supply contracts (mainly gas supply contracts). In parallel, many cases are resolved through litigation.

Are statements made in settlement discussions (including mediation) confidential, discoverable or without prejudice?

Statements made in settlement discussions either before or upon commencement of arbitral or judicial proceedings are confidential if so agreed by the parties, which is, in principle, the norm. Communications between lawyers in the framework of a settlement discussion are by ethical rules not disclosable in litigation and subject to approval by clients.

In parallel, Law 4640/2019 on Mediation in Civil and Commercial Disputes and further harmonisation of Greek legislation with the provisions of Directive 2008/52/EC expressly provide that the entire mediation process, including any related information, is confidential.

Privacy and privilege

Are there any data protection, trade secret or other privacy issues for the purposes of e-disclosure/e-discovery in a proceeding?

No e-disclosure/e-discovery exists in Greek court proceedings.

As per data protection, the General Data Protection Regulation (GDPR) and the implementing Law 4624/2019 constitute the legal framework providing the specific legal bases and conditions for personal data processing (inter alia, data subject's consent and the protection of a legitimate interest). GDPR applies to the activities of courts and other judicial authorities (recital 20), as well as to the activities of lawyers (recital 91). This means that any data processing within the dispute resolution process, either before court or under ADR mechanisms, must be performed in accordance with the GDPR requirements.

Further, Law 4605/2019, transposing into Greek legislation Directive (EU) 2016/943, has introduced a coherent and efficient national framework on the legal protection of trade secrets against their unlawful acquisition, use or disclosure by third parties and the preservation of the confidentiality of trade secrets in the course of legal proceedings.

What are the rules in your jurisdiction regarding attorney-client privilege and work product privileges?

Greek law recognises the concept of attorney–client privilege, which takes the form of professional confidentiality with respect to all information provided by a client to the attorney and obtained when dealing with a case. Lawyers may invoke attorney privilege and refuse to testify in criminal and civil proceedings.

The sources of protection of confidentiality are the Greek Lawyers' Code, regulating the legal profession, the Greek Lawyers' Code of Conduct, the Greek Criminal Code, the Greek Code of Criminal Procedure and the Greek Code of Civil Procedure.

However, exceptions from legal privilege under conditions are provided for by Law 4557/2018, implementing European Directive 2015/849/EU, on anti-money laundering.

Jurisdiction

Must some energy disputes, as a matter of jurisdiction, first be heard before an administrative agency?

Private disputes may be brought to courts or arbitration without a mandatory hearing before an administrative agency. However, a party may in parallel bring a complaint before RAE in the case of violations of the Energy Law, statutory provisions and granted permits by entities involved in energy activities. RAE decides on the complaint within three months. RAE may also impose fines or other administrative disciplinary measures in the event of an ex officio finding of an infringement. RAE's decisions can be challenged before the Administrative Court of Appeals of Athens.

Further, if RAE ex officio or following a complaint ascertains that it is highly probable that there has been a breach of national and European electricity or gas legislation, which poses an immediate, serious and imminent threat to public safety, order, health or competition or pose serious financial or operational problems to other businesses, it may impose interim measures by a reasoned decision. Non-compliance with RAE's interim decisions may result in the imposition of fines.

REGULATORY

Relevant agencies

Identify the principal agencies that regulate the energy sector and briefly describe their general jurisdiction.

With respect to the definition and implementation of the national energy policy and the coordination of the energy sector, the Ministry of Environment and Energy (YPEKA) is the competent supervising authority of a number of public institutions and companies active in the energy sector, including Hellenic Electricity Distribution Network Operator SA, Independent Power Transmission Operator, PPC and the Centre for Renewable Energy Sources.

In parallel, RAE constitutes the Greek regulator for the energy sector. RAE monitors and supervises the energy markets, conducts studies, publishes and submits reports, grants production licences for electricity generation from RES, decides or recommends to the competent authorities the necessary measures, including the adoption of regulatory and individual acts; in particular, RAE's supervision aims at ensuring compliance with regulatory obligations, consumer protection, fulfilment of public service obligations, environmental protection, security of energy supply and development of the internal market or the EU but also with competition rules. RAE in collaboration with the Hellenic Competition Commission deals with competition violations in the energy sector. Further, RAE issues opinions on electricity retail tariffs and tariffs to electricity transmission and distribution networks and also acts as a dispute settlement authority on complaints against transmission or distribution system operators in the electricity sector and administers energy arbitration proceedings as mentioned above. To successfully perform its regulatory task, RAE may, inter alia, collect information, conduct investigations, examine complaints and impose fines and penalties or take interim measures.

Access to infrastructure

Do new entrants to the market have rights to access infrastructure? If so, may the regulator intervene to facilitate access?

The new entrants to the market can access the existing infrastructure for electricity and natural gas on a non-discriminatory basis (third-party access), in compliance with a set of rules according to which the entrants may have to

enter into regulated contracts, fulfil technical specifications, pay the predefined tariffs or issue licences. These rules apply equally to all the infrastructure users.

The access to the network of gas transmission can be denied by the operator only in the event of a lack of capacity or if such access might prevent the provision of public service obligations entrusted to the operator and pursuant to explicit justification. Also, the operator is obliged to proceed with economically feasible improvements to ensure access to the network.

The operator of the power transmission network can refuse to grant access to the network only in the case of depletion of the charging capacity of the system and such refusal should be based on objective, technical and economic criteria.

Refusal of access to the energy infrastructure can under certain conditions be considered infringement of competition in energy activities. For example, the refusal of the Gas Transmission System Operator to permit the delivery of the first private liquefied natural gas (LNG) shipment in LNG storage facilities in 2010 led to a dispute of both civil and administrative or supervisory nature.

An exemption from the obligation of the third-party access can be granted for a predefined period by the regulator for a part or for the entirety of new interconnections with other countries' transmission systems.

Judicial review

What is the mechanism for judicial review of decisions relating to the sector taken by administrative agencies and other public bodies? Are non-judicial procedures to challenge the decisions of the energy regulator available?

Decisions taken by administrative agencies and other public bodies relating to the energy sector may be appealed before administrative courts (Court of Appeals or Council of State). Deadlines for judicial recourse range between 30 and 60 days. The grounds for appeal can cover the full range of substantive and procedural objections that can be raised against any enforceable administrative order.

Fracking

What is the legal and regulatory position on hydraulic fracturing in your jurisdiction?

Fracking is facing very strong opposition based on the associated potential health risks and environmental impacts that are not currently adequately regulated. There has been political movement during the past couple of years to ban fracking in Greece; however, no regulation has been implemented in this direction so far.

Other regulatory issues

Describe any statutory or regulatory protection for indigenous groups.

There is no such protection in Greece.

Describe any legal or regulatory barriers to entry for foreign companies looking to participate in energy development in your jurisdiction.

Companies established within the EU face no barriers of entry in the energy development. However, any foreign company, with a licence to perform activities in the electricity sector in another EU member state, is required to obtain a

Greek licence, and further, any change with respect to the control of the licence holder is required to be notified to RAE and YPEKA, which may disapprove of a change of such control. Companies (1) seated in EU, European Economic Area states, state members of the Energy Community or in third countries that have concluded bilateral agreements with Greece or the EU or (2) with a branch establishment in Greece may apply for a licence for electricity production (or trade).

With respect to third-country companies (ie, companies seated outside EU and European Free Trade Association), a specific permission for the acquisition of ownership rights on real estate property in border zone areas of the country is required.

Also, the state may impose ad hoc restrictions to protect national interest. Investments in strategic infrastructure by non-EU entities may be screened by the EU Commission (eg, the sale of DESFA's shares).

What criminal, health and safety, and environmental liability do companies in the energy sector most commonly face, and what are the associated penalties?

Companies in the energy sector are obliged to abide by the provisions enacted for the protection of the environment (indicatively, Laws 1650/1986 and 4042/2012). Environmental impact assessments, approval of the environmental conditions for the issuance of operating licences and compliance with land planning rules are required. In the case of infringements, companies face criminal or administrative liability (or both) the severity of the consequences of which depends on the type and the extent of the violation. Penalties may also be imposed on the directors or executives of energy companies who are responsible for ensuring compliance.

Further, the legislation that lays out the measures to be implemented for ensuring the health and safety of the employees (Law 3850/2010) provides criminal and administrative sanctions in the case of non-compliance.

OTHER

Sovereign boundary disputes

Describe any actual or anticipated sovereign boundary disputes involving your jurisdiction that could affect the energy sector.

There are no actual or anticipated sovereign boundary disputes that could affect the energy sector.

Energy treaties

Is your jurisdiction party to the Energy Charter Treaty or any other energy treaty?

Greece has been a party to the Energy Charter Treaty (ECT) since 1994. Further, Greece is a signatory to the Agreement on an International Energy Programme (1974), the Protocol on Energy Efficiency and Related Environmental Aspects (1994) and the Amendment to the Trade-related provisions of the Energy Charter Treaty (1998).

Regarding nuclear energy, Greece has signed a number of treaties, among which the Paris Convention on Third Party Liability in the Field of Nuclear Energy (1960) as well as the two additional Protocols (1964 and 1982), the Treaty on the Non-Proliferation of Nuclear Weapons (1968), the Convention on the Physical Protection of Nuclear Material (1980) and the Amendment thereof, and the Comprehensive Nuclear-Test-Ban Treaty (1999).

Investment protection

Describe any available measures for protecting investors in the energy industry in your jurisdiction.

Over the years, several major investment projects have been concluded and this together with Greece's updated energy investment regulatory framework, provide an array of opportunities for investment in the energy sector.

Both domestic and foreign investors are protected by the Greek Constitution, EU law and international law, which guarantee the right to property, the right to a fair trial, the principle of equality, the principle of financial freedom and the principle of non-discrimination.

Additionally, bilateral investment treaties are in force between Greece and a number of other countries. Also, Greece is a party to the ECT, which includes provisions on investment protection and formulates a legal framework for energy, trade, transit and investment.

Large-scale infrastructure projects benefit from favourable provisions protecting strategic investments. Pipeline infrastructure projects (ie, TAP, gas interconnector Greece–Bulgaria and Eastmed) have obtained intergovernmental support and are subject to beneficial financing schemes.

Cybersecurity

Describe any legal standards or best practices regarding cybersecurity relevant to the energy industry in your jurisdiction, including those related to the applicable standard of care.

Directive 2016/1148 on security of network and information systems (NIS Directive) is the first horizontal legislation undertaken at EU level for the protection of network and information systems. The NIS Directive was transposed into Greek legislation via Law 4577/2018 providing that the General Secretariat of Digital Policy – Ministry of Digital Policy, Telecommunications and Media of the Ministry of Digital Governance is the competent authority, and sets the National Strategy on the security of network and information systems.

The Law applies to operators of essential services, inter alia, in the energy sector and to digital service providers. Its objective is to achieve a high common level of security of network and information systems within the EU via the introduction of an obligation to adopt national strategies on the security of network and information systems, and of risk management and incident reporting obligations for operators of essential services and digital service providers. The Greek Cyber Security Strategy was approved by virtue of Ministerial Decision No. 3218/2018.

The EU has been addressing cybersecurity issues in a comprehensive manner since the establishment of the European Union Agency for Network and Information Security (ENISA) in 2004 (Regulation (EC) No. 460/2004) located in Greece. ENISA has been actively contributing towards guaranteeing a high level of network and information security within the EU for the benefit of citizens, consumers, enterprises and public sector organisations in the EU. The EU Cybersecurity Act (Regulation (EU) 2019/881) revamps and strengthens ENISA and establishes an EU-wide cybersecurity certification framework for digital products, services and processes.

UPDATE AND TRENDS

Update and trends

List any major developments (case law, statute or regulation) that are anticipated to affect the energy sector in your jurisdiction in the next 12 months, including any developments related to the taxation of energy projects. What is the anticipated impact of climate change regulations,

treaties and public opinion on energy disputes?

The National Energy and Climate Plan (NECP)

The NECP, the strategic plan until 2030, has been recently submitted to the European Commission and sets out the details for major objectives, such as the reduction of greenhouse gas emissions and ultimately (by 2050) the transition to a climate-neutral economy, the augmentation of the renewable energy sources (RES) energy production, the improvement of energy efficiency, the lignite phase-out plan, the electrical interconnection of the islands and the launching of the new electricity market model without further delay.

Infrastructure

Through progress made in the construction of major infrastructure projects such as the Trans Adriatic Pipeline, the gas interconnector Greece–Bulgaria, the EastMed pipeline, the Alexandroupolis floating storage and regasification unit (FSRU) and the extension of the Gas Transmission System Operator DESFA's liquefied natural gas terminal in Revithousa, Greece's impact in the Balkan natural gas market is magnified. Greece also plans to launch a tender for the exploitation of a depleted natural gas field at South Kavala as an underground gas storage facility, further expanding its natural gas capacity.

Significant restructuring of the electricity network is expected as the internal electricity interconnection of the Greek islands with the main electricity grid is advancing. Further, the Public Power Corporation (PPC) attempted to sell lignite units to comply with the decision of the European Court of Justice for third-party access to lignite following the binding goal of reducing PPC's shares below 50 per cent in 2020. However, there was no interest, it was not successful and alternative structural measures for the period up to 2023 are currently being examined by the European Commission.

Hellenic Energy Exchange (HEnEx)

A radical development is the establishment in 2018 of the Hellenic Energy Exchange (HEnEx), founded in line with the EU target model, designed to reshape the system of a mandatory pool in the wholesale electricity market and also to operate gas and environmental markets. HEnEx is currently in operation and marks the transition to a new era in the energy sector. Gradually adding to its markets, HEnEx's derivatives market started operations in March 2020 ahead of schedule.

Significant legislative developments in 2019–2020:

- a new framework for the unbundling or the natural gas distribution network and for the use of the country's geothermal potential (Law 4602/2019);
- reshaping the gas market through Public Gas Corporation (DEPA)'s corporate transformation and privatisation, after which, the former's assets and activities will be divided among three companies DEPA Infrastructure SA, DEPA International Projects SA and DEPA Commercial SA aiming at enhancing competition in supply, making distribution networks more efficient and ensuring the design and implementation of DEPA's international projects (Law 4643/2019). In addition, DEPA recently prevailed over its supplier, the Turkish BOTAS, in a dispute arising from natural gas price revisions. An arbitral award ruled that BOTAS should cut prices retrospectively since 2011 the contractual gas prices that DEPA has paid. DEPA's customers, who have been burdened with the additional cost, will be urged to retrieve their share of the returned sum;
- PPC's modernisation to enhance corporate governance, effective operation and reinforceability by increasing liquidity (Law 4643/2019);
- introducing compensation for RES producers outside the support scheme of feed-in premium and feed-in tariff

contracts (Law 4643/2019) and participation of RES producers in the electricity markets (day-ahead market, intra-day and balancing market);

- new provisions in the Energy Law on electric vehicles aiming to develop a sustainable transportation system in the electromobility market and achieve set decarbonisation targets; and
- new provisions to be adopted to modernise environmental law aiming at the simplification and acceleration of the licensing procedure of RES projects for the promotion of investments in the clean energy sector.

The covid-19 pandemic has had a multifaceted impact on energy markets reduced oil and gas consumption, disruption of supply chains, delays in the realisation of RES projects. The Greek government introduced urgent measures in the energy sector by virtue of a legislative act issued on 30 March 2020 providing, inter alia, for the extension of deadlines for RES and combined heat and power projects (eg, extension of the validity period of installation licences, the final grid connection offers and the deadlines for the trial operation of RES power stations).