



CLIENT'S ALERT

**Increased penetration of LNG –
Regulatory and Legal Challenges**



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**Regulatory
Challenges in the
Multifunctional
Role of the LNG**

**The EU LNG
Regulatory
Landscape**

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towards Secure
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Gas**

The constantly developing LNG market and the relevant regulatory challenges

The route to a successful energy transition requires developing strategies that aim towards the optimization and cost-effective use of energy resources and infrastructure.

The significant decrease of natural gas production within the EU, as well as the impending decrease in long-term gas contracts in the coming years, render increasingly important the role of Liquefied Natural Gas (LNG) in a series of issues affecting the natural gas market, among which the crucial issue of security of supply. In particular, LNG imports in Europe reached in 2019 approximately 85 million tones, while an increase of more than 10 million tones is expected in 2020.

LNG imports in Europe in January 2020 have surpassed the respective imports for the same month in 2019

According to the New York Times, LNG imports in Europe in January 2020 have surpassed the respective imports for the same month in 2019. Regardless the overall low utilization of LNG capacity in Europe, constantly increasing demand has contributed to the rise of the storage levels in some LNG storage facilities, Greece being a typical such case, thus granting new opportunities for economic activity in the natural gas market, but also bringing new challenges to its operational framework.

In view of the above, the existing LNG Terminals are called upon to adapt to the needs of the constantly increasing demands for import, storage and regasification, that in some regions, like Greece, result in the creation of congestion in the terminals, and require greater flexibility and transparency as to the treatment of participants in the LNG markets by facilities' operators.

Furthermore, many of the existing regasification terminals have begun to provide additional services (such as trans-shipment, bunkering etc), while terminals developed at present are also planned to offer such services.

Directive 2009/73/EC and Regulation (EC) 715/2009 have significantly reinforced the EU regulatory framework as regards LNG Import Terminals

Given the above, the existing legal framework, both at national and EU level, is constantly faced with the necessity to adapt to the constantly evolving conditions, as described above, along with compliance with the EU law requirements to an equal, transparent and free of discriminations, access to LNG and the relevant services.

The EU Regulatory Framework on LNG

The EU legal framework on natural gas contains no special regulation on LNG.

Nevertheless, Directive 2009/73/EC of the European Parliament and of the Council (as amended by Directive 2019/692) – “Concerning common rules for the internal market in natural gas”, expressly includes in its scope activities related to LNG, while Regulation (EC) No 715/2009 of the European Parliament and of the Council – “On conditions for access to the natural gas transmission networks” includes provisions concerning third-party access (Article 15), principles of capacity-allocation mechanisms and congestion-management procedures (Article 17) and transparency requirements (Article 19), concerning storage facilities and LNG facilities, and also provides that the Operator's obligations on record keeping and trading of capacity rights in a transparent and non-discriminatory manner (Articles 20 and 22, respectively), also apply to LNG facilities.

In particular as regards the management of congestion in LNG facilities, Article 17 of the Regulation provides that, in order to prevent capacity-hoarding, the established procedures will take into account the principles below:

- In cases of contractual congestion, the system operator must offer unused LNG facility and storage capacity on the primary market without delay; for storage facilities this must be at least on a day-ahead and interruptible basis
- LNG and storage facility users who wish to re-sell their contracted capacity on the secondary market must be entitled to do so.

Directive 2009/73/EC and Regulation (EC) 715/2009 have significantly reinforced the EU regulatory framework as regards LNG Import Terminals, which poses questions as to whether this helps create equal terms of competition between terminals that are regulated and the ones exempted, since the former must comply with the above provisions, contrary to the latter.

Additionally, the above regulations leave an important discretion margin to LNG Terminal Operators as regards the applicable capacity-allocation and congestion management mechanisms, as well as the amount of charges imposed as a result of the “Use it or lose it” principle, which also does not help to establish commonly shared methods of dealing with the issues that arise, at common market level.

Moreover, Regulation (EU) No 1227/2011 of the European Parliament and of the Council “On wholesale energy market integrity and transparency” (the “REMIT Regulation”) and Commission Implementing Regulation (EU) No 1348/2014, which specifies the application of Articles 8(2) and 8(6) of the REMIT Regulation, foresee the obligation of participants in the above market to keep and share data and submit reports related to them.

Nevertheless, due to issues that have arisen concerning the exact content of the above obligations, in the end of 2018 ACER stated that a next step has to be taken by amending the legal framework and render the exploitation of this data easier to participants in the European LNG market.

As demand for LNG rapidly increases, the regulatory framework is adjusted, so as to serve as a basis to a competitive market environment and help boost the innovation required for the energy transaction.

The Council of European Energy Regulators (CEER), recognizing the multifunctional role of LNG, the dynamics it helps create and the challenges that emerge, has published two studies (“Removing LNG Barriers on Gas Markets” and “How to Foster LNG Markets in Europe”), focusing in the services provided by LNG Terminals in Europe and the methodologies they apply in order to determine the imposed charges, and provided useful benchmarks for industry dynamics in both world and European level, summing up the regulatory framework applicable to LNG terminals and aiming to the planning of European Strategy on LNG and gas storage.

Within 2019, LNG imports in Europe reached approximately 85 million tones, while an increase of more than 10 million tones is expected in 2020.

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Greek Legal Framework on LNG – The Terminal of Revithoussa

At present, Greece disposes of one LNG import terminal, in the isle of Revithoussa, which is operated by the National Natural Gas System Operator (DESFA) S.A. Access to the terminal is governed by the Greek Code of Operation of the National Natural Gas System. The Code regulates issues related to the main services concerning LNG, which include unloading, storage and regasification of LNG and injection into the transmission system.

In order to make use of the terminal, a user must submit a demand and conclude an LNG agreement with the terminal's operator. According to the relevant Code provisions (Chapter 11, Articles 66 et seq.), the operator, on the basis of the demands submitted and the criteria established thereby, proceeds to the scheduling of the Terminal's activity, initially on a yearly and then on a monthly basis, while the users that have not participated in the above scheduling procedure may also submit their demand.

Access can be denied, if, indicatively, granting it may prevent the operator from fulfilling its public service obligations, as well as if the requested capacity exceeds the available regasification capacity of the LNG facility. The user is allowed to allocate or lease the regasification and storage capacities it has booked to another user.

It is also noted that, according to the most recent amendment of the Code (RAE Decision 1005/2019), in case the number of the LNG cargoes stated in the submitted demand on yearly basis exceeds the cargoes that were actually brought in the terminal by more than one, the user must pay to the operator a charge of 200.000,00 euros per the difference in the number of cargoes, reduced by one.

The European Policy on LNG and the relevant Regulatory Challenges

The European Commission has often stated that LNG imports are essential to diversify sources of energy supply to its member states.

The constantly increasing use of LNG constitutes an important contribution to the European Union's effort to achieve the targets that have been set in the framework of its policies towards energy security as well as decarbonization. Furthermore, apart from decarbonization and security of supply at a European level, LNG also constitutes an important ambit of economic activity and competition in the European gas market.

In view of the above, active cross-border coordination between Transmission System Operators and regulators is important, in order to promote and further facilitate cross-border transactions and access of all parties to LNG facilities, in terms of transparency and non-discrimination. Therefore, it is necessary to set common goals, procedures and quality standards on EU level.

The constantly increasing use of LNG constitutes an important contribution to the European Union's efforts towards energy security

As demand for LNG rapidly increases, the regulatory framework is adjusted, so as to serve as a basis to a competitive market environment and help boost the innovation required for the energy transaction.

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