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Student Name: Gaziteri Olga

SID: 3302110013

Supervisor: Professor Theodore C. Panagos

SCHOOL OF SCIENCE & TECHNOLOGY

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TABLE OF CONTENTS

| | |
|------------------------|---------|
| Acknowledgements..... | p. 4 |
| Preface | p. 5 |
| Literature Review..... | p. 6-23 |

CHAPTER 1 THE LIBERALIZATION OF ENERGY MARKETS IN EUROPE

| | | |
|-----|---|----------|
| 1.1 | <i>‘Travelling’ from the Monopoly to the Liberalization of Energy Markets</i> | |
| | | p. 24-29 |
| 1.2 | <i>The Previous Law for the Liberalization of Energy Markets</i> | p. 29-32 |

CHAPTER 2 THE EUROPEAN RULES FOR THE CONSUMERS PROTECTION

| | | |
|-----|---|----------|
| 2.1 | <i>A General View of the Consumers Protection</i> | p. 33-38 |
| 2.2 | <i>The Previous Law about the protection of the European Consumers</i> | p. 38-40 |
| 2.3 | <i>Greek Legislative Rules about Energy and Consumers Protection. The Greek Previous Law</i> | p. 40-42 |
| 2.4 | <i>The existence and the operation of Organizations and Entities for the Protection of Energy Consumers</i> | p.42-44 |

CHAPTER 3 THE ENERGY CONSUMERS’ PROTECTION THROUGHOUT EUROPEAN DIRECTIVES

| | | |
|-----|--|----------|
| 3.1 | <i>First Generation Directives on Electricity and Gas</i> | p. 45-46 |
| 3.2 | <i>Second Generation Directives on Electricity and Gas</i> | p. 46-51 |
| 3.3 | <i>Third Generation Directives on Electricity and Gas</i> | p. 51-58 |
| 3.4 | <i>The Lisbon Treaty: a big step in the Energy Policy</i> | p. 58-59 |

CHAPTER 4 THE LEGISLATIVE FRAMEWORK OF THE ENERGY CONSUMERS’ PROTECTION IN GREECE

| | | |
|-----|---|----------|
| 4.1 | <i>The Greek Law 2773/1999 and 3426/2005 for the liberalization of Electricity Market in Greece</i> | p. 60-61 |
| 4.2 | <i>The Greek Law 4001/2011 for the transposition of European Directives 2009/72, 2009/73/EC and the consumers’ protection</i> | p. 61-69 |
| 4.3 | <i>‘The compatibility of the specific charge to Greek consumers to electrified surface, to the European legislative framework of deregulated energy market’</i> | p. 69-70 |

CHAPTER 5 THE LEGAL PROTECTION AFFORDED TO THE ENERGY CONSUMERS'

5.1 Legal protection afforded to the Energy Consumers through European Directives p.71- 73

5.2 Legal protection afforded to the Energy Consumers through Greek legislation p.74-76

5.3 The Legal Framework of the Energy Consumers' Protection in Germany, United Kingdom, Italy, Spain and France p. 77-86

EPILOGUE –CONCLUSIONS.....p. 87-90

BIBLIOGRAPHY.....p. 91-95

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PREFACE

The issue that this dissertation is going to analyze concerns ‘‘The Energy Consumer Protection under the European Energy Law’’ and the way that Electricity and Natural Gas Markets had been organized according to the provisions of the European Primary and Secondary Law. The ‘travel’ starts from the liberalization of the Energy Markets, specifying in the legal protection of the European Energy Consumers. The legislative framework of the Energy Markets of some European Countries, such as United Kingdom, Spain, Germany, France, Italy and Greece, is going to play a significant role in this survey because it will be used as key study with the aim of obtaining a qualitative comparative survey, offering final conclusions of this dissertation.

Literature review according to the structure of the Dissertation

This dissertation focuses to ‘‘The Energy Consumer Protection under the European Energy Law’’ and the organization of the legal framework in electricity and natural gas in European Union. In order to make an analytical targeted literature review, it would be better to divide the dissertation to chapters to make this analytical review of the literature.

The books that the researcher intends to use for the development of this master thesis are the following which are described below.

Firstly, the ‘‘*Competition in Energy Markets, Law and Regulation in the European Union*’’ Peter D. Cameron, 2000, 2nd edition, (Oxford University Press). Professor Cameron’s book is very helpful for these researchers that target to specialize in EU energy law, as far as in the emerging issues of competition and security of supply in the framework of liberalization of the electricity market. Peter Cameron stresses that the Electricity Directive’s priorities are the rules applicable to ‘‘public service’’ and consumer protection and that the consumer must enjoy a high level of this protection.

Furthermore, the author refers to special provisions that must be set by the Code of the Supply of electricity, as far as to the correct and accurate information that must be offered to the consumers such as the fuel mix of the generation sources and the environmental impact of these sources.

The ‘‘*Legal Aspects of EU Energy Regulation*’’, 2005, (Oxford University Press) of the same author, pinpoints the lack of transparency in network access, of transmission capacity, and of an appropriate coordination between TSOs in order to ensure efficiency and reliability.

On the other hand, the author Steven Ferrey with his book ‘‘*The New Rules: A Guide to Electric Market Regulation*’’, 2000, highlights the importance of electricity market energy rules and legal restrictions that are replacing the traditional utility environment. He makes a general reference to the consumers’ protection with the specific target to lower the prices.

Furthermore, he proposes two key parameters, • the reasonable price that should govern the electricity market and • the quality of services in order to ensure customers rights and benefits. The advantage of this book compared with others with the same topic is the fact that it summarizes the regulatory changes and the new rules that govern the electricity market in one volume.

Another book that is interesting for the development of this thesis is ‘*The EU Energy Law*’, *Christopher W. Jones, Brussels: Claeys & Casteels, 2nd edition, 2006*. The author highlights that Member States shall take appropriate measures to protect consumers and especially vulnerable consumers. For this reason, he makes an extensive description of the obligations that Member States have in order to ensure this protection.

‘*The Institutional Framework of the Energy Market- the organization and operation of the deregulated energy market in Greece*’, *Dr Theodore C. Panagos, 2012*, is one of the few books for somebody that is interested to make a literature research in Greek bibliography for specialized Energy Law Issues.

The author emphasizes that the protection of consumers is an element of public interest. Furthermore, he stresses that the third generation of European Energy Law and the subsequent national Greek legislation introduces significant and specific regulations for the protection of energy consumers in general and in particular certain types of consumers. As a consequence of the principle of the customers’ right to choose their supplier must be the simple preparation of the legal relationship between the consumer and the supplier, (the supply contract), which as an express statutory provision should not be financially charged.

Additionally, the author underlines that the Greek legislation provides the right to electricity customers that are connected to maximum and medium-voltage, to get supplied energy from several suppliers. Due to the fact that the consumer is regarded as the weak part of the supply contract, the national legislature, in accordance with the European legal framework, establishes a significant number of informative commitments.

The scientific paper of *Dr Theodore C. Panagos* ‘*The compatibility of the specific charge to Greek consumers to electrified surface, to the European legislative*

framework of deregulated energy market'', Nomiko Vima, touches a current key issue which concerns the Greek energy consumers. The author analyzes the exact way that was imposed an extra fee to the energy consumers with the article 53 of the Greek Law 4021/2011 for the reason of public interest. It had been foreseen that this special fee will be charged, via the electricity bill of the Public Power Corporation S.A and alternative energy suppliers and in the case of non-payment, the connection to the electrical grid will be interrupted.

To come back to the structure of this dissertation, the first Chapter of this Master thesis contains the "Travelling" from the Monopoly to the Liberalization of Energy Markets and the Previous Law for this Liberalization. The establishment of the internal market in electricity is particularly important to increase efficiency in production, transportation and distribution of electricity, while enhancing security of supply and the development of European economy with respect to the environmental protection.

In 1992, the European Commission had put forward proposals to the Council on common rules in the internal electricity and gas. As a result, there was the creation of the first set of Directives for the release of the European energy market.

For Electricity, Directive 96/92/EC, of the European Parliament and Council of 19 December 1996, was a concerned common rule for the internal electricity market.

For Natural gas, Directive 98/30/EC, of the European Parliament and the Council of 22 June 1998, was a concerned common rule for the internal market in natural gas.

After an extensive study of the European precursor law, there is a clear conclusion that the previous Directives had an insufficient analysis of the legal protection of the consumers' rights and of the general definitions. Furthermore, the responsibilities of Regulatory Authorities in the EU were mixed and thus regulated the internal market becomes problematic. Previous Regulatory Framework focused on wholesale market. The new Directives - third legislative package, focus on Organization and Operation of the retail market to achieve provision of Enhanced Services and real possibility of exercising the right to choose supplier.

The second Chapter of this Master thesis contains the European Rules for the Consumers' Protection as far as the legal instruments which are binding on all parties and must be transposed by Member States into national law within a specified period, according to the EU Treaty.

At this chapter, General European legal instruments are going to be used as a key point for the literature review which concerns the consumer protection. To be more precise, the Directive 97/7/EC of the European Parliament and Council of 20 May 1997, which referred on the protection of consumers in respect of distance contracts, will be analyzed. This Directive was the approximation of laws, regulations and administrative provisions of Member States, concerned distance contracts between consumers and suppliers.

Directive 97/7/EC set out a clear definition for the "distance contract" which is any contract between a supplier and a consumer concerning goods or services, agreed in a sales system or provider of distance run by the supplier, who, by contract, can make an exclusive use of one or more means of distance communication up to the award of the contract, including the moment of concluding the contract. For the definition of the "Consumer" the above Directive refers to any natural person who, acts for purposes which are outside his professional activity. Furthermore, the "Supplier" means any natural or legal person who acts in his professional capacity.

This Directive do not apply to contracts concluded i) by means of automatic vending machines or automated commercial premises, ii) with telecommunications operators through the use of public payphones, iii) for the construction and sale of property or other rights related to real estate, except for rental, and finally to contracts concluded at an auction.

Following the agreement between the EU institutions and tough negotiations that lasted nearly three years, today voted by a large majority in the plenary of the European Parliament in Brussels, the Directive 97/7/EC is going to be replaced by a new directive on consumer rights, which clarifies more specialized the rules on consumer protection across Europe.

The new rules, which update the existing EU legislation on consumer rights, will be an important factor in developing and completing the single European market, giving new impetus to e-commerce and cross-border markets.

In European Union there is a competent body which is part of the European Commission, the General Directorate for Health and Consumer Protection, and it is responsible for issues concerning the everyday life of a European citizen. Moreover, it promotes the safety of consumer protection in the single internal European market in accordance with the articles 95 and 153 of the Treaty of Amsterdam.

In order to come in contact with the competences of the mentioned Directorate, the central site of the European Union would be useful.

In Greece, LAW 2251/1994 (Government Gazette A 191/16 November 1994) concerned Consumer protection, as in force after the amendments below, it has been ported to the initiative of the Commercial and Athens Chamber of Industry and the General Secretariat Consumer.

Amendments::

-Law2496/1997,-Law 2741/1999 (Government Gazette 199 A ' / 28.9.1999)
-Joint Ministerial Decision No Z1 - 496/7-12-2000 (Official Gazette B 1545/18 - 12-2000) -Law3043/2002 Government Gazette 192 A/21-8-2002)
-Joint Ministerial Decision No Z1 - 659/14-10-2002 (Official Gazette B 1373/25 - 10-2002) -the PD 301/2002 (Government Gazette 267A ' / 11.4.2002) and
-Joint Ministerial Decision No Z1 - 629/10-05-2005 (Official Gazette B 720/30 - 05-2005) -Law 3587/2007 (Government Gazette 152A ' / 10.7.2007)

Furthermore, the Greek General Secretariat for Consumers, whose competences are defined from the Presidential Decree 197/1997, is part of the Ministry of Development and it proposes the formulation of policy for the consumers' protection, it can legislate at national level and harmonize national legislation with EU when required. It can also

undertake to solve the problems consumers face in their dealings with private sector companies as far as with public utilities.

In Greece, for the protection of the consumer rights, there is also established the General Federation of consumers. INKA / GOKE is an independent, non-profit, and non-governmental organization, which is in accordance with national legislation on Consumer Protection (Law 2251/1994).

INKA was the first consumer organization in Greece. It was founded in 1970. The Federation INKA / General Consumers' Federation of Greece was founded in 1995. It currently has 46 members-organizations in Greece, forming the largest network of consumer organizations in the country, and representing 94% of citizens and consumers who actively participate in the Greek Consumer Movement.

In May 2003, INKA was selected, by the General Directorate for Health and Consumer Protection of European Commission, to implement the European Consumer Centre, a centre of information and support consumer-citizens of the European Union and a national network node of 15 centres in 13 Member States of the European Union.

In order to analyze the subject of the second chapter, the writer will use the suitable European Directives. The European Commission has put forward proposals to the Council on common rules in the internal electricity and gas market. As a result was the first set for the release of the European energy market and specifically the Directive 96/92/EC of the European Parliament and Council of 19 December 1996 concerned common rules for the internal electricity market, and the Directive 98/30/EC of the European Parliament and the Council of 22 June 1998 concerned common rules for the internal market in natural gas.

The Directive 96/92/EC of the European Parliament and the Council laid down the principles which concerned the opening to competition of the European electricity sector.

The Commission attached great importance to the consolidation of the joint electricity market, which is an essential step towards completing the internal energy market.

The gradual transition from a state of a very limited competition in effective competition at European level should be done in terms that are acceptable from an economic perspective, taking into account the particularities the electricity industry has. The text of the Directive is already reflected in large extent to this requirement. Member States, except Belgium, Greece and Ireland had to transpose Directive 96/92/EC into national law by February 19, 1999 at the latest. Belgium and Ireland were required to do so no later than February 19, 2000, and Greece no later than February 2001.

Most Member States used the provisions of Article 24 of the Directive and therefore notified the Commission of the transitional measures that they had taken. However, it was found that many Member States notified measures that are outside the scope of Article 24, which provides that the Commission may adopt transitional measures that are a temporary exemption from the application of the Directive.

The barriers identified in the comparative reports of the European Commission, led to the adoption of the second package of measures to liberalize the European energy market at June 26, 2003. Directive 2003/54/EC of the European Parliament and Council of 26 June 2003 concerned common rules for the internal market in electricity had repealed Directive 96/92/EC. The main obstacles to achieving a fully operational and competitive internal market relate amongst other things, issues of network access, the pricing of network services and different degrees of market opening between Member States.

This Directive 2003/54/EC established common rules on generation, transmission, distribution and supply of electricity. It laid down rules on the organization and operation concerning the electricity sector, access to market, licensing and operation of

networks. Furthermore, Regulation (EC) No 1228/2003 of the European Parliament and Council of 26 June 2003 determined the conditions for access to the network for cross-border exchanges in electricity. The purpose of this regulation was:

- a) to establish fair rules for cross-border exchanges in electricity and thus enhancing competition within the internal electricity market, regional markets. This requires the establishment of a compensation mechanism for cross-border flows of electricity and harmonized principles on cross-border transmission charges and the allocation of available capacities of interconnections between national transmission systems
- b) to facilitate the creation of well functioning and transparent wholesale market with a high level of security of electricity supply.

Moreover, the Directive 2003/55/EC regulated the full opening of national gas markets to competition, thus helping to create a genuine internal market for natural gas in the EU. The completion of the internal gas market provides the opportunity to develop competition and improve service quality, ensuring fair prices for consumers, setting rules for public service obligations, improve connectivity and increase security of supply. The internal market in natural gas can be realized only if consumers play an active role and effective use of their right to freely choose their supplier of gas. Therefore, for the proper functioning of the internal market in natural gas is necessary to inform consumers about their rights and ensuring the effective protection relative.

Directive 2003/55/EC set common minimum standards to ensure high level of consumer protection (right switching, transparency of contractual conditions, general information, dispute resolution mechanisms, etc.), with particular attention to ensuring adequate protection of vulnerable consumers (for example, by taking appropriate measures to enable the avoidance of interruption of gas supply).

Gas supply is a service of general interest, in which citizens have access against payment. On that basis, the Directive instructs to Member States to impose public service in order to achieve security of supply, economic and social cohesion, regularity of supply, quality and price of gas supply and protection of the environment.

There was also a Notice of the European Commission (March 11, 2009) to the Council and the European Parliament entitled "Report on progress in creating the internal gas

and electricity’’. This report presents the state of transposition of the second package in relation to the internal energy market. Efforts were numerous to apply real competition, especially in regional initiatives. However, gas prices rose significantly during the first half of 2008, the unbundling of distribution networks (mandatory from 1 July 2007) was not applied consistently.

On the other hand, the Commission has a few figures on changes in natural gas suppliers on behalf of users, making it difficult to assess the competitive market. According to European Commission, the internal market in natural gas is still too fragmented. To compensate for this fragmentation should be a priority action for the integration of markets and the development of cross-border infrastructure and trade. Finally, it is strongly advised to abandon price regulation that prevents competition and prevents new potential suppliers to the market.

- At September 19, 2007, the European Parliament and Council had made a proposal (third legislative package) for amending Directive 2003/55/EC concerning common rules for the internal gas market.

As stated by the Commission in the sector inquiry, the internal energy market malfunctions, whose effective treatment is not possible under current rules. The proposals of the third legislative package included in the directions of the notice on the prospects of the internal market in natural gas and electricity, and include:

- unbundling of generation and supply management by system operators, or by disconnecting the asset (i.e. no longer be able to be a single business owner both of the transmission network and to carry on production or supply) or independent system operator (companies with vertical integration could remain owners of the network, provided that management will actually exercised by a company or organization totally independent), while there are provisions specifying that companies from third countries should be meet the separation requirements if they wish to acquire a significant stake in a European network;
- the increased responsibilities and independence of national regulatory authorities and their cooperation by creating cooperation bodies of regulators for energy, which has the power to take binding decisions and impose sanctions;
- official proclamation of the European groups of transmission, to improve

coordination and, among other things, the development of common commercial codes.

At January 2007, there was a publication of the research sector to European Commission's records glitches serious competition in the energy market. The Commission proposed a third package to accelerate the completion of the internal energy market at August 14, 2009, and the third legislative package for the internal energy mark was finally published. The innovative element is the fact that regulation establishing an Agency for the Cooperation of European Energy Regulatory Authorities.

The rationale of the Directive 2009/72/EC is to establish common rules for the generation, transmission, distribution and supply of electricity and for the consumer protection, to improve integration and competitive electricity markets in the Community. It lays down rules for the organization and operation of the power sector, open market access, criteria and procedures applicable to calls for tenders and licensing and operation of networks. It also establishes universal service obligations and rights of electricity consumers and clarifies the obligations of the competition.

The internal market for electricity, which has been progressively implemented throughout the Community since 1999, aims at delivering real choice for all EU consumers, be they citizens or businesses, new business opportunities and more cross-border trade, to achieve efficiency gains, competitive prices, higher standards of service, and to contribute to security of supply and sustainability.

At third chapter, article 3 of this Directive, refers that Member States shall ensure by means of their institutional set and by proper compliance with the principle of subsidiarity that businesses must operate with a view to achieving a competitive, safe and environmentally sustainable electricity market. Moreover, chapter three analyzes the European Consumers' Protection throughout European Directives.

Member States shall ensure that all consumers can be supplied with electricity from a supplier. In this respect, Member States shall take all the appropriate measures to ensure that administrative procedures do not discriminate against firms and Suppliers that have already registered in another Member State, and additionally all the household customers have the right to be supplied with electricity at reasonable price. For the

provision of universal service, Member States shall ensure a supplier of last resort for 3 months.

In Annex 1, of the Directive 2009/72/EC, the measures for the consumer protection are reported in details. For example, it is referred that Member States shall ensure the implementation of smart metering systems that help engage consumers in the electricity market. The implementation of these measurement systems may be subject to economic evaluation of all long-term costs and benefits for the market and individual consumers in relation to the form of smart metering in order to be economically more reasonable and efficient.

This evaluation is held up to September 3, 2012. Based on this assessment, Member States have to draw up a schedule to implement smart metering. If the development of smart metering is positively assessed, at least 80% of consumers must be equipped with smart meters by 2020.

Electricity Regulation 714/2009 promotes fair rules for cross-border exchanges in electricity, it enhances competition within the internal market and it facilitates the emergence of a well-functioning and transparent wholesale market with a high level of security of supply.

On the other side, Directive 2009/73/EC concerns common rules for the internal European market in natural gas and it repeals Directive 2003/55/EC. The scope of this Directive is to deliver real choice for all consumers of EU, be they citizens or businesses, to achieve competitive prices, higher standards of service, and to contribute to security of supply and sustainability. Article 3 is referred to the protection of consumers as far as to the obligation of Member States to ensure that there are safeguards to protect vulnerable customers.

The same with the Electricity Directive, Natural Gas Directive makes an extensive reference on the measures of consumer protection in Annex 1.

Gas Regulation 715/2009 ensures the proper functioning of the internal gas and it sets non-discriminatory rules for access conditions to natural gas transmission systems, LNG, facilities and storage.

At paragraph 50 of the Green Bible, it is the first time that it is systematically mentioned at a legislative text, the concept of universal service and it is referred that the concept of universal service concerns a set of general interest relating to ensuring the availability of certain services at a specified quality to all consumers and users throughout the territory of a Member State, regardless of their geographical location and, in the light of specific national situations, at an affordable price. This concept has been developed specifically for network industries (e.g. telecommunications, electricity and postal services). The concept establishes the right of every citizen to access certain services considered essential and imposes obligations on industries to provide a defined service at specified conditions, which include, inter alia, the full territorial coverage. In a liberalized market environment, the universal service obligation guaranteeing universal access to service and maintain and, where necessary, improve the quality of service.

The Directive 2002/22/EC was also the first legislative text, (the same as paragr.50 of the Green Bible) that had systematically mentioned the concept of universal service. This Directive established the rights of final consumers and the corresponding obligations of businesses on providing public-universal service. With regard to ensuring universal service within an environment of open and competitive markets, this Directive defined the minimum set of services of specified quality which was accessible to all final users, taking account of specific national conditions, at an affordable price and without distorting competition. This also defined the obligations regarding the provision of certain mandatory services.

The chapter four of this master thesis is going to give an analytical point of view of the Greek Legislation in Electricity and in Natural Gas, with specialization in consumers' protection. Greek Laws 2773/1999, 3426/2005 and 4001/2011 are going to be a key point of reference for the development of the dissertation's subject.

The Electricity Laws 3426/2005 and 4001/2011 present the way of the exercise of the electricity activity, the constitution and operation of the Energy Regulator, the rules of the generation of electricity, the transmission of electricity, the constitution and the operation of the TSO, the issuance of the Transmission System Code, the role of DSO,

the rules of tariffs setting and of legal, functional and accounting unbundling, the rules for the consumers protection and the public service, etc.

The Greek Law 2773/1999 pinpointed that the production, transmission, distribution and supply of electricity to the GREEK territory carried out in accordance with the rules of this law. Articles 25-27 of this Law are referred to the consumers.

The article 25 of the Law 2772/1999 is repealed by the Law 3426/2005(article 16) which talked about Eligible Customers and Customers in small isolated networks.

The purpose of the Law 4001/2011 is to integrate into Greek legislation the provisions of Directive 2009/72/EC of the European Parliament and Council of July 13, 2009 "concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC) and Directive 2009/73/EC of the European Parliament and Council of July 13, 2009 "concerning common rules for the internal market in natural gas and repealing the Directive 2003/55/EC.

Specifically, article 24 stated to the consumers protection and it specifies that the Regulatory Authority of Energy (RAE) in Greece shall supervise the implementation of measures to protect customers, according to the provisions of the Second Part of the Law. RAE, with its decision, may require transmission system operators and energy distribution networks to the provision Customers' consumption data at no charge and it can examine customer complaints unless arising out of or related to issues of regulatory oversight provided by this law.

The second part of this law is specialized in consumers' protection and the article 46, which is subject to the provisions of Law 2251/1994 regulating particular issues to protect customers in the supply of electricity and gas. For the purposes of these chapters in any reference Customers are getting understood as referring to Eligible Customers. The provisions of Chapters A and B shall not apply to Eligible Customers

The law does not set conditions for the enjoyment of the option supplier of Eligible Customers, nor restrict the exercise of the right in any way. In practice, the supply of a client from a particular supplier requires accordance with Article 19 of the Code of Transaction Electricity.

The method of proof determination for the Eligible Customer is specifically regulated by Article 9 § 3 of the Code. Under this provision, the supplier must inform the Operator, providing written authorization of the Eligible Customer immediately after the conclusion of supply contracts with Eligible Customer, so that he can make the appropriate entry in the database held.

As part of this right, the Eligible Customer may have contracts with several suppliers to meet sections of the overall load, as far as more independent supply contracts or getting supplied some of the energy he needs from the supplier and some part of Electricity imports from conducting himself for his own exclusive use of binding in the latter case, as provided in provisions of the Code Management System. Thus, the right choice of the supplier includes the possibility of the Customer to define not only the supplier but also the quantity of energy corresponding to each supplier.

Article 52 of the Greek Law 4001/2011 covers the protection of Vulnerable Customers. Vulnerable clients included the following customer groups:
(A) Residential Customers, suffering from energy poverty.

(B) Customers who themselves depend largely on a continuous and uninterrupted power supply, requiring mechanical support and in particular persons who need continuous supply of electricity to operate equipment or support monitoring of vital functions, but not limited to, mechanical devices support respiratory or cardiac function.

(C) Elderly clients, who have completed their seventieth (70th) birthday, provided they do not cohabit with another person who has not attained the above age.

(D) Customers with severe health problems, particularly those with severe physical or mental disabilities, serious or audiovisual motional problems, or with multiple disabilities or chronic disease and who can not manage and negotiate their contractual relationship with the vendor.

(E) Customers in remote areas and especially in the non-interconnected islands qualifying same services, price and quality, security of supply and transparency of contractual terms and conditions with other customers.

Depending on the difficulties faced by each category, it may be taken additional steps to cover the right of consumers' protection, particularly to provide reduced fares, or discount on the published tariff of each vendor, the installation of meters with prepayment options, more favourable terms of payment accounts, alternative ways to access customer service and bill payment.

It must be clarified that when we refer to vulnerable customers, we must make a distinction and refer to those suffering from energy poverty, who are 2 categories. Firstly, these customers those spend important part of their income for their energy adequacy and those who live in remote- isolated areas.

Another legal text that is going to be used is the Greek Supply Code of Electricity to Customers. With the Electricity Supply Code, there are specified the obligations of suppliers for different customer segments according to the particularities of these customers on their consumption and the economic and negotiating capacity.

The major changes compared to the previous draft of the Procurement Code are summarized as follows:

- There were added for the first time, specific chapters with specific settings for both the protection of small customers, and vulnerable consumers.
- There was also added a section on specific arrangements with the Supplier of Last Refuge and the Universal Service Provider, in accordance with Articles 57 & 58 of Law 4001/2011 and experience gained in recent months.
- In the Code, are incorporated the regulations that were contained in two key previous decisions of the RAE, namely those concerning the Principles of

Electricity Pricing (RAE Decision 692/2011 and the Principles of communication with customers RAE Decision 771/2011).

- And finally, it is generated a special Annex III about the Query Management Principles for consumers in order to have better protection and to improve the services offered to them.

At fifth Chapter, it will be examined the way that it is provided to European Energy Consumers protection in energy issues and generally the Legal Framework of their Protection in Germany, United Kingdom, Italy, Spain and France. Moreover, fifth Chapter analyzes the Legal Protection afforded to Energy Consumers through European Directives and Greek Legislation.

A very informative book for this target is *“Energy Law in Europe, National and International Regulation”*, Martha M. Roggenkamp, Catherine Redgwell, Inigo Del Guayo, Anita Ronne, Oxford, second edition, 2007.

This book offers an appropriate understanding of Energy Law in Europe, as far as a premise for the design of a European Common Energy Policy, and an instrument for the objectives of energy policy. It is also a useful tool for professors, students and lawyers that aim to specialize in energy Law issues.

The German Energy Sector has great economic importance within the European Union not only because its’ energy consumption, which is at the fifth largest in EU, but also because it’s an important energy transit country.

Moreover, Germany had made desperate efforts, as noted in the EU document, with trying to build a coalition to ensure that it will not be imposed the complete unbundling, so the EU ministers had adopted an alternative way, whereby the former state monopolies such as E.ON and RWE in Germany, can retain ownership of transmission

networks for electricity and natural gas, provided that they are subject to external supervision.

According to Energy Law in Germany, ‘Energy Regulation is mainly subject to the Energy Industry Act (Energiewirtschaftsgesetz - hereinafter, EnWG”) which is Federal Law. The new EnWG dealing with the general structure of electricity and gas markets came into effect on 29 April 1998 and it is directed towards the liberalization and deregulation of the German electricity and gas markets with the intention to lower prices for electricity and gas to a competitive level within in the European common market’.

In contrast, Britain argued strongly in favour of the Directive on "abolition of property relations" in the energy sector. Margin for the implementation of new measures has been given until 2012, but when a country chooses to follow the path carved out by France and Germany, the deadline is March 3, 2013.

Most European countries have already started to adjust the domestic electricity market in the new measures. For example, firms like E.ON and Vattenfall have already advanced in the sale of the transmission of high voltage electricity in Germany, while Endesa did the same in Spain. The European Union, which represents the largest single energy market, with 500 million consumers and 20 million businesses, it is called to invest heavily in the modernization of transportation networks.

In Italy, the production activities, imports, exports, and supply to suitable customers are free over the Italian territory, but ‘the obligations such as public service is complied with the EU Regulations.

In Spain, the Constitution changed the traditional expression of ‘public service’ with the expression ‘ reserved essential service. In 1986, Spain had entered into the European Union and from then ‘the idea of public service’ was changed into ‘the idea of economic interest’.

In United Kingdom, it is widely known, that there is no written Constitution. Great Britain, Northern Ireland has their own separate legal systems, but the legal differences are minimal.

So, after an extensive study of the Legal framework in Energy Sector at these European countries, the level of the quality of consumer protection will be controlled, in the respective European countries in relation to the Legal framework of Greece and the conclusions and recommendations will be presented, as far as the effectiveness of this legal protection.

CHAPTER ONE

THE LIBERALIZATION OF ENERGY MARKETS IN EUROPE

1.1 *“Travelling” from the Monopoly to the Liberalization of Energy Markets*

Europe, in terms of population, is the third largest continent after Asia and Africa. While in Europe there are now 47 countries, including states as the Vatican and the Faeroe Islands, the European Union is consisted of 27 States with a population of 495,578,000 inhabitants¹.

As a result, Europe has significant huge needs of energy to survive. Nevertheless, the European Union is vulnerable in concepts that concern energy resources. It is significant that approximately most of energy consumed in EU, nowadays, is a source of fossil fuels such as oil, carbon and natural gas. Few of the EU countries have their

*According to surveys of Euro-stat ‘ ‘much of the growth in electricity consumption since 1973 has taken place in residential and commercial/public sectors. The share of the residential and commercial/public service sectors combined increased from about 38% to 52% over the last 30 years. Although the amount of electricity consumed in the industry sector has constantly increased, it has increased at a slower rate than in the residential and commercial/public sectors. Consequently, the share of industry has decreased from 51% in 1973 to currently around 42%.The transport (rail) and agriculture (mainly irrigation pumps) sectors are relatively small consumers of electricity’ ’.*²

¹ See, www.wikipedia.com

² <http://epp.eurostat.ec.europa.eu>.

Transportation consume most of the final energy which is about 33%, and then it comes households with an annual consumption of 26, 5% and industry about 24, 2%.³

The European Union is strongly dependent on imports of foreign countries in order to cover its energy needs. The strong dependence of the energy level in Europe has significant impacts on the economies of European countries and it shapes the balance of power in the international system of States. Some States have strong geopolitical dependence on other States and thus make them vulnerable to political pressure. Moreover, fossil fuels are non renewable energy sources, hence the constant consumption will inevitably lead to future depletion of these energy resources. Finally, the use of fossil fuels has strong negative impacts on the environment, because there are released harmful greenhouse gases contributing to the greenhouse effect and the worsening of global warming and.

In the early 20th century, the alternating current became the dominant technology and offered relatively low prices. The importance of electricity as a public good is increasing, firing laws and regulations of the States. With the dawn of the 20th century, the electricity sector is characterized as a part of a public infrastructure.

On the other side, as the energy sector had, for many years, characteristics of a monopoly, private power companies tent to exploit their monopoly position in the market.

In all countries, the protection of monopolistic power companies offset the obligation of a smooth and non-discriminatory provision of electricity at reasonable prices. This led to the concept of "public service" that all electricity companies should offer regardless of their ownership status.

³ See, <http://epp.eurostat.ec.europa.eu>

Although the companies (or industries or public service etc) had separate sections such as "Generation", "Production", "Transfer" and "Distribution", with different personnel to staffs, they had only one section for bills to monitor and distribute the cost of parts, so the power industry was holding public account for revenues and expenses of all departments.

It was observed that despite all the variety of power industries, Europe had common principles. All costs arise were covered by consumers and taxpayers. There was a close relationship between business policy and the government, regardless of ownership of the business. So, Electricity systems were limited within national borders and their operation was overseen by companies with electricity as their only occupation.

These policies have serious implications for the exact way that decisions were taken. The new investments, although they were large in size, they did not take into account the idea of minimizing the costs in order to make them affordable to consumers.

Traditional Power Systems, starting from early 1970, were subjected to pressures to engage in changes. These pressures are the result of various causes, from the flowering of the movement of environmentalism, to market pressures and the rapid development of technology. Furthermore, the energy crisis of 1970s led to the "high watermark of government intervention"⁴ of government intervention in the energy sector.

It wasn't random the phrase of J. R. Hicks, who said in 1935 that: "Most of the profits of the monopoly is the quiet life".⁵

A survey of the European Commission, in January 2007 for the way that energy markets operated the previous years, came to the conclusion that the vertical integration of energy companies appeared to worsen problems to competition by creating unequal access to basic market information and allowing incumbents to strategic behavior.⁶

⁴ P. D. Cameron, *Competition in Energy Markets*, 2007, p.13

⁵ J. R. Hicks, *Annual Survey of economic Theory, Theory of Monopoly*, vol. 3, 1935.

⁶ Brussels, 10 January 2007, *Competition: Commission inquiry in Energy confirms serious problems, competition IP/07/26*

The decrease of autonomy and self-reliance in the face of the State led them to low productivity, often at a high bad debt and service to consumers. The electricity companies had a lot of time to understand the difference attitudes of young consumers.

Power companies saw their selves as a heroic construction which had no precedent in human history. The light was best for them from the darkness, even if the existence of frequent interruptions, and adverse fluctuations in voltage and frequency.

At the same time, it was created, gradually, the perception that the electricity sector should be freed from the shackles of regulation of the State since it become increasingly clear that in many cases State interventions did not lead to optimal utilization of existing resources. At the same time, these interventions were deprived power companies the flexibility, speed and rationality in decision making in order to maintain security of supply, low prices, respect of the environment and, simultaneously, good economic results.

Those who question not only the monopolistic character of large power companies, but also the vertical structure, thanks to which, inevitably acquire exclusive control of economic technical issues, making them essentially unregulated and therefore not compatible with democracy. In Greece, for example, the State had allocated in the past the Generation, Distribution, Transmission and Trading only in ONE company (PPC), as far as the management and exploitation of lignite - a key national primary energy of the country. This excessive concentration of power, resources and expertise had created feelings of superiority over other actors of society and that could lead to social blackmails and uncontrollable situations, which do not fit with the operation of the democratic system. However, the monopolistic energy policy has defined an era after the Second World War, when under reconstruction, the State assumed the burden of operating in this sector.

However, the electricity sector remains a capital intensive industry; it requires constant sources of capital. The exclusive rights, that electricity companies were benefited in the past, were secured them with an important part of the necessary funds,

together with borrowings guaranteed by the State, enabled them to carry out large investments in small cost of Capital.

Nevertheless, in order to change the distortions that took place in the energy markets there had been appeared, as a solution, the **Liberalization of the electricity market**, which took place in the early 1990s. Before the Liberalization of the market all activities carried on by a state monopoly. After the Liberalization, there is clear separation of activities and the entrance of privates, which would be impossible without the existence of this Liberalization.

Neo-liberalism is a modern ideological and political expression of economic liberalism. The liberal-modernist thinking has influenced all ideological hues and it supports the superiority of the market. Simultaneously, the growing demand for electricity has the clearest conclusion that the old, large-scale power plants were not economic efficient, and the prospects opened up by the smaller and decentralized cogeneration units were more than encouraging. But it is of great importance that neo-liberalism disregarded that the State should be governor. The so-called deregulation was disastrous. So, as a result ‘‘the marginal price system does not reflect the real costs of energy production and continues to manipulate. Continued excessive state intervention policy on tariffs and administered prescribed rates, resulting inefficiencies and higher rates of competitive cost’’.⁷

"Neoliberalism" has ardent supporters in many developed Western countries, believing in the superiority of the market, asking governments to retreat from their leading role and give its place to the economy. In Countries such as Germany, Denmark and the Netherlands, there was a bloom of the above ideas.

⁷ Greek Newspaper ‘‘Kathimerini’’, Article, P.Kapros ,’’Energy Policy and Charges’’, 21/01.2012

The establishment of the internal market in electricity is particularly important to increase efficiency in production, transportation and distribution of electricity, while enhancing security of supply and the competitiveness of European economy with respect to the environmental protection. There were established, under the principle of subsidiarity, general authorities for the organization of energy markets at the EU level, but the definition of specific terms application were left to Member States which had decided which best suited to their particular situation status.

1.2 The Previous Law for the Liberalization of Energy Markets

During the difficult roadmap to the liberalization of energy markets, the establishment of these markets is being accompanied by a law making process that concludes three packages for this liberalization. The first package for the liberalization of electricity market was adopted at 19 December 1996 with the **Directive 96/92/EC**. **This Directive was the Previous Law** of the organization of energy markets. It set common rules for the generation, transmission and distribution of electricity. It laid rules on the organization and conduct of electricity, market access, criteria and procedures applicable to tendering, licensing and exploitation of networks. That was a first "coward" step for this liberalization and mutatis mutandis it had formed the basis for a new era in energy.

The European Commission and European Parliament came to detection that it is important to adopt measures to ensure the smooth functioning of internal market and the free movement of goods persons, services and capital. It was widely accepted that the completion of a competitive electricity market is an important step towards completing the internal energy market and that the provisions of the

Directive 96/92/EC should not affect the full implementation of the Treaty, in particular its provisions relating to the internal market and competition.⁸

The important question of unbundling and transparency of accounts enshrined in this directive⁹ and is the precursor law of accounting separation. Regarding the critical issue of network operators this directive does not speak about its ownership. It was considered that each transmission system should be subject to central management and control to ensure the safety, reliability and efficiency of the system.

As it is broadly accepted that the main reason for establishing a distinction between undertakings operating in the transport and distribution of electricity and those that carry on competing activities of production and marketing, is to avoid any kind of discrimination, preferential behavior and other distortions to final consumers.

The removal of the transmission system from the monopolist companies and the administration of their so-called management to the Transmission System Operator (TSO), was according to Panagos " one of the most radical measures of the above directive."¹⁰

Those relating to issues of supervision and control of the operation and development of the electricity sector, the overall 1996 Directive did not require the creation of an independent Regulatory Authority.

The European Commission stressed that the internal electricity market should be developed in stages for industry to be able to adapt to new environment in a flexible and reasonable way.

Member States, based on their institutional organization and with due regard to the principle of subsidiarity, had to have as their target to achieve a competitive electricity market, and should not discriminate between these undertakings as regards either rights or obligations.

⁸ Recital of the Directive 96/92/EC, par.3.

⁹ Directive 96/92/EC, Art. 13-15.

¹⁰ *Th.Panagos*, The unbundling in Energy Sector companies, 2011

Having full regard to the relevant provisions of the Treaty, especially Article 90, Member States had to impose obligations on electricity undertakings public service in the view of general economic interest and their obligations must be clearly defined.

Moreover, the above mentioned Directive stressed that Member States should create appropriate and efficient mechanisms for regulation, control and transparency so as to avoid any abuse of dominant position, particularly in expense of consumers, and any predatory behavior.

According to the provisions of the Directive, **Belgium, Greece and Ireland**, due to their technical characteristics of electricity, they had an additional period of one year, two years and one year respectively for the implementation of the obligations arising from this Directive.¹¹

Furthermore, an **important previous law was the Council Directive 90/377/EEC** of 29 June 1990, concerning a Community procedure to improve the transparency of gas and electricity prices to industrial end-users with a target to ensure that there is no distortion of competition within the common market. Transparency is a key factor in the implementation and proper functioning of the internal energy market and it can help to eliminate discrimination against consumers by increasing their freedom to choose between energy suppliers.

The degree of transparency varies with the energy source and within the different European countries and regions of the Community. This Directive stressed that Member States should take the necessary steps to ensure that companies had to classify consumers and the corresponding volumes by category of consumption in order to ensure the representativeness at national level, of these categories.

¹¹ Directive 96/92/EC, Art.27(2)

The above Directive had clarified that the annual consumption in kilowatt-hours for off-peak periods should be calculated by extrapolation. Wherever is possible, the price reported should have been based on published tariff applicable to the category of consumer, and might have been chosen the most advantageous for the consumer.

Where the electricity can be used in a given category of consumers in different reference voltages, it should have to be notified that the trend was a better reference for the consumer of that class. This basic principle was applied to other parameters not specified in this Directive.

Another declaration about the energy sector was adopted on 17 December 1991 at the Hague and it was the first formal step in the Energy Charter Treaty to serve as a legal and political foundation for West- East cooperation.¹² In 1991 the European Commission proposed the European Energy Charter and it had been signed by 49 States and the European Communities.¹³

As it is commonly accepted, the Directive 96/92/EC contributed significantly to the liberalization of the internal electricity market, but it was quickly revealed the need to accelerate this liberalization in order to achieve a fully operational internal electricity market.¹⁴ At the Lisbon Summit, on 23 and 24 March 2000, the European Council called for rapid work in order to get managed the completion of the internal electricity and gas market and to speed up the creation of a true internal electricity market because this is not as developed compared to other economic sectors.¹⁵

It is important to be referred that the Directive 96/92/EC had not clear and specific regulations about consumers' protection and it was not sufficient in order to be fortified legally, expressly and strictly this protection, so the need for new rules that would defend the rights of consumers was obvious and imperative.

¹² M, M. Roggenkamp, C. Redwell, A. Ronne, I. Del Guayo, "Energy Law in Europe", 2007, p. 148

¹³ O.p.c, p.148

¹⁴ Mourgelas & Partners, The-liberalisation of the electricity market, p.1

¹⁵ http://www.cres.gr/kape/pdf/nomiko_pl/FEK/2003_1228.pdf, par 2, p.1

CHAPTER TWO

THE EUROPEAN RULES FOR THE CONSUMERS PROTECTION

2.1 A General View of the Consumers Protection

During the 20th century and earlier, the member States of the European Union were individually devised policies aimed at defending specific interests of consumers, whose economic and political rights were recognized as essential to the society. The methods used to secure these rights reflected in the differences of each Member State in their legal systems, as well as their cultural traditions, institutional and political contexts. Some States favored a regulatory approach based on an integrated management structure for dealing with problems relating to consumers, while other States took a more pragmatic approach, giving priority to the provision of goods and services.

The concept of a policy on consumer protection occurred in the mid-70s. The Treaty of Rome did not provide for the establishment of such policies and only in the Paris Summit in 1972, the State Members expressed their first political will on this issue. Shortly after, the Commission presented its first action plan on consumer protection.¹⁶

Initially, the Treaty of Rome contained no formal legal basis specifically for the protection of consumers, but, long before the official recognition by the former Article 129A, the Community had to deal with consumer protection.

Real progress in Consumer Policy had offered the Single European Act, which had come into force on the 1st of July 1987 and with the introduction of Article 100A in the Treaty .

Thus, the European Commission proposals, which have established the European Community, were based largely on the protection of the rights of consumers.

¹⁶ I. Karakostas, *The Consumers' Protection*, 1997

Before the Single European Act, the Commission stated the White Paper to the Council of Ministers on ‘‘Completing the Internal Market’’¹⁷ submitted in 1985 and it stressed that the completion of the internal market is a necessity.

In 1990 and 1991 the Council adopted a directive on the transparency of prices electricity and gas and industrial end consumer and transportation of electricity and natural gas through grids in order to guarantee the supply of the Member States by Community or from a third country suppliers. The Treaty of Maastricht (1992) and among other modification of SEK increased and the influence of the European Parliament on a variety of issues, including energy.

The repealed importance of borders and the implementation of the Single Market on January 1993 had created a market of millions of consumers thus leading the necessity for extra rules. This positive development is confirmed by the Treaty of Maastricht, which-structured the protection of consumers and the true dimension of EU policy on this field. Not only is expressly stated to the general objectives that the Community must contribute to the strengthening of consumer protection but also to construct a legal framework for the conduct of consumer policy. The following new prospects opened to take concrete form in the "Green Bibles" relating to injunctions, contracts, negotiated at a distance, comparative advertising and interstate transportation of money.

The new Article 153 (ex Article 129A) (which will take the number 153 after the new numbers provided by the Treaty of Amsterdam) of the Treaty is aimed at ensuring a high level of consumer protection and not just a simple contribution in this direction. Also, the new provision emphasizes the need to promote the right to information, education and the right of consumers to organize them in order to protect their interests.

The Treaty of Amsterdam, without modifying the above rules, gave new directions for boosting the consumer policy. This Treaty protects the health, safety, economic interests of consumers and it promotes their right in information and education. At the same time, it organizes them to defend their interests.

¹⁷ White Paper from the Commission to the European Council, Milan 28-29 June 1985, Brussels

It is widely accepted that the European Union has made efforts to adopt rules to protect the economic and legal interests of consumers in their dealings with professionals and in case of disputes. The Union has banned the main commercial practices considered unfair, facilitated the amicable settlement of disputes and small claims and harmonized process of injunctions for the protection of consumer interests. It also created a European information network and a network of national authorities for the effective implementation of legislation on consumers. Furthermore, the Union has made efforts to promote the legal certainty, by harmonizing the rules applicable to certain transactions, such as electronic commerce or certain types of contracts, and by harmonizing the rules applicable to specific sectors such as transport or financial services.

For the European Union, every citizen is a single consumer. If the single market operates properly, this will enhance consumer confidence in cross-border transactions and it will have a positive impact on competition and prices for the benefit all EU citizens and markets.

Despite the fact that several provisions of the Treaty refer to the consumer, it is not given however no clear definition of the concept of consumer. The definition of consumer is done by Secondary European Legislation.

In order to qualify a person as a consumer, there should be two conditions. The first defines the terms in a positive way and it refers to the nature of the consumer and the second is defined by default and shown in terms which operate the consumer.

Welfare and wellbeing are key EU authorities, which are reflected in its laws. The participation of a state in the EU ensures extra protection for consumers. An efficient and integrated European economy strengthens consumer confidence in cross-border transactions. However, before consumers decide to make purchases abroad, they should be confident, well informed and they must have clear legal rights in case of trouble.

Consumers' interests have been taken into account in legislation for the liberalization of basic network facilities such as transport, electricity and gas, telecommunications and postal services. The new legislation ensures that consumers will surely have universal access to quality services at affordable and reasonable prices. Consumers should have any recourse if the EU rules are not applied correctly. For this purpose, better cooperation between Member States is crucial. The judicial proceedings, especially in the courts of another country, can be costly and time consuming. To encourage out of court settlement of disputes, the Commission has developed alternative ways of resolving them with free or low cost.

The European consumer policy for purposes of safeguarding the interests, health and safety of consumers, was enshrined in Article 169 of the Treaty on the Functioning of the European Union¹⁸.

The decision 20/2004/ EC has replaced the decision 283/1999/EC (which expired in 2003) by adopting a budget within four years. The aim was to establish a direct link between the actions funded in support of consumer policy and strategy priorities for consumer policy 2000-2006, taking into account the new Financial Regulation applicable to the general budget of the European Communities. The decision was aimed at funding and it referred that“ The financial framework for the implementation of this Decision for the period from 1 January 2004 to 31 December 2007 is set at EURO 72 million, of which EURO 54 million shall cover the period until 31 December 2006”¹⁹.

In order to take account of the new concerns of European citizens, the EU, in 2007, significantly changed the political priorities in this area.

The European Union has adopted a financial framework of 156.8 million Euros in support of consumer policy for the period between December 31, 2006 and December

¹⁸ Article 169 TFEU, as modified by the Amsterdam Treaty.

¹⁹ Decision No 20/2004/EC, Art.5

31, 2013. This framework will fund 11 steps to ensure a high level of consumer protection and effective enforcement of the rules in this area.²⁰

Another kind of legal protection that have the European consumers is the use of injunctions. The injunctions must be efficient enough to put an end to violations affecting the collective interests of them. The aim of this harmonization of national legislation in this area is to facilitate the smooth functioning of the internal market. **The Directive 2009/22/EC**²¹ established this right. Offences take into consideration include consumer credit, package holidays and package tours, unfair contract terms in consumer contracts, distance contracts and the unfair trade practices.

The use of injunctions can manage cessation or prohibition of infringement, where appropriate, under urgent procedure; eliminating the continuing effects of the offense, particularly through the publication of the decision; defendant's obligation to execute the judgment by imposing a penalty.

Another subject that is of great importance for the protection of consumers rights are the Services of General Interest. The Lisbon Treaty provides better protection to services of general interest to the European Union. In particular, it clarifies the nature of these services and principles associated with these services.

Services of General Interest include market services and non-market services, which involve certain Public Service Obligations (PSOs). Services of General Economic Interest (SGEI) are a subcategory and include effective market services. These services are also subject to PSOs, and in this sense may derogate from some European standards, especially in competition. For example, for services in energy, transport or telecommunications.

The Treaty of Lisbon brings yet another initiative. It creates a new legal background on which the European institutions have to adopt regulations on the management of SGEI.

²⁰ Decision No 20/2004/EC, Art.5

²¹ Directive 2009/22/EC, Art.1 (1)

Thus the Article 14²² of the Treaty gives the power to the Council and the Parliament to establish certain principles and conditions relating to the implementation and financing of SGEL.

2.2 The Previous Law about the protection of the European consumers

For the sake of a comprehensive development of the subject of consumer protection, it is necessary to be mentioned and presented the previous law, in order to give the reader a clean and spherical view of the subject.

It is bestowed that European consumers benefit from an increased level of protection when they buy a product or service at a distance. They benefit from a series of contractual rights and rules harmonized at the European level.

The professionals have to provide the consumer with clear and comprehensible information, in good time prior to the conclusion of the contract. They must give due regard to the principles of good faith in commercial transactions and the protection of persons who are unable to give their consent such as minors.

Council Directive 85/577/EEC of 20 December 1985 concerns the protection of consumers in respect of contracts negotiated away from business premises.

The Council of the European Communities, having regard to the special feature of contracts concluded away from business, had felt that the consumer is totally unprepared because the negotiations start with the initiative of the trader and sometimes the consumer is not able to compare the quality and price offered with other offers; generally this surprise element exists not only in contracts made at the doorstep but also in other forms of contract the initiative undertaken by the trader away from his business premises;²³

Moreover this Directive supported that the consumer should have the right to withdraw at least seven days in order to be able to assess the obligations arising under the contract.

²² Treaty of Lisbon, Art. 14

²³ Council Directive 85/577/EEC, Art. 1

Another European Directive that is precursor law of the European Union is the **Directive 87/102/EEC** for the approximation of laws, regulations and administrative provisions of the Member States concerning consumer credit and the consumer's right to pursue remedies against the creditor in case of non performance or improper performance of the contract for goods or services financed by the credit.

Article 11 of the Directive stresses that Member States shall ensure that the existence of the credit agreement shall not affect in any way the rights of the consumer against the supplier of goods or services purchased through similar contract in cases where goods or services are not supplied, or, in any way, do not respond with the contract provision.

Directive 90/88/EEC set out a mathematical formula for calculating the annual percentage rate of charge throughout the Community and for determining credit cost items to be used in the calculation.²⁴

On the other side, European Council had in mind that it was important to adopt measures for the progressive establishment of the internal market over a period expiring on 31 December 1992 and for this reason it had adopted the **Directive 93/13/EEC** of 5 April 1993 on unfair terms in consumers' contracts.

This Directive²⁵ stated that Member States shall lay down that unfair terms in the contract between a seller and a consumer, as provided for under national law, might not be binding on the consumer and that the contract should continue to bind the parties if it can be done without the unfair terms. Member States should also had to take the necessary steps to not lose the protection afforded to consumers under this Directive by virtue of the choice of law applicable to the contract law of a third country, if the contract has a close connection with the territory of the Member States.

²⁴ Directive 93/13/EEC

²⁵ Directive 93/13/EEC, Art.6

Moreover, DIRECTIVE 97/7/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 May 1997, referred on the protection of consumers in respect of distance contracts. This Directive was the approximation of laws, regulations and administrative provisions of Member States, concerned distance contracts between consumers and suppliers.

DIRECTIVE 97/7/EC set out a clear definition for the "distance contract" which is any contract between a supplier and a consumer concerning goods or services, agreed in a sales system or provider of distance run by the supplier, who, by contract, can make an exclusive use of one or more means of distance communication up to the award of the contract. For the definition of the "Consumer" the above Directive refers to any natural person who, acts for purposes which are outside his professional activity. Furthermore, the "Supplier" means any natural or legal person who acts in his professional capacity.

2.3 Greek Legislative Rules about Energy and Consumers Protection. The Greek Previous Law.

The increasing globalization of the economy at the global level and the smooth functioning of the single market at EU level had made, the previous years, imperative the need for unification or harmonization at least those areas of private law, which were crucial for a stumble movement of goods, individuals, services and capital. Legislative and administrative harmonization in certain areas of civil law and public law were in many ways useful and desirable, perhaps necessary in order to fully cover the area of the consumer's protection at national level.

In Greece, the characterization of energy activities as utilities puts them under the supervision of the Greek State and this incorporates them into the realm of legal interest of public (administrative) law so that the disputes arising between the public authorities and market participants are examined by the administrative courts.

On the other side, it is obvious that the various differences of private law between market participants are examined by the civil justice.

The legal nature of energy has dual character, as good and a service. As far as it concerns Greek Legislation, Greek Rule of Civil Code provides that energy and in particular electricity is considered as dominating thing (article 947). In that sense, the energy should be considered as mobile (article 948 of Civil Code) and fungible (article 951) which is capable of being dominating and operated by the proprietor.²⁶

The Greek Criminal Code provides that the power of electricity, steam and other energy is a mobile thing (article 372 paragraph 2)²⁷ and anyone who removes a foreign (totally or partially) movable thing by having another in order to seize illegally, is punished by imprisonment of at least 3 months. As a consequence of this legal thesis, the misappropriation of electricity theft is considered as a crime.

Essentially, the Greek **legal framework for consumer protection** was initially created with **Law 1961/1991**. It was the first time that the above law, in fact constituted a framework, regulating a significant number of issues pertaining to consumer protection.

The Greek Law 2251/1994 concerned the Consumer Protection and it had repealed the previous Greek Law 1961/1991. Law 2251/1994 stressed that the Greek State should ensure the interests of consumers and in particular: a) health and safety of consumers, b) their financial interests, c) the organization of consumers' associations, d) the right to get informed on issues that concern them and to get educated on consumer issues.

In the interpretation of general business conditions, it was taken into account the need to protect the consumers. Article 5 of this Law provided that at each sale, the supplier must provide the consumer with clear instructions, written in Greek language

²⁶ *Th. Panagos*, The Legal Framework of the Energy Market. The organization and operation of the liberalized energy market in Greece'', 2012, p.2

²⁷ Greek Criminal Code, article 372

or in symbols internationally established, for safe use, preservation, maintenance and full use product and information about the dangers in the use and preservation.

Upon sale, the supplier is obliged to inform the consumer the possible shelf life. Possible life product is the reasonable expected time at which the product can be used as intended, whether after repair or replacement parts. When a guarantee to the consumer is provided, it must be provided in a written form.

2.4 The existence and the operation of Organizations and Entities for the Protection of Energy Consumers

In European Union there are a lot of entities that are occupied with the consumers' protection. For example, the **European Consumer Consultative Group (ECCG)**²⁸ is the Commission advisory body to consult national and European consumer organizations.²⁹ The ECCG group on Competition was created in 2009. This group has representatives of consumer organizations of Member States and they have a meeting 2 times a year in Brussels to discuss about competition issues.

The European Consumer Organization (BEUC) consists of 42 members from Member States consumer organizations from 31 European countries.³⁰ BEUC is like an umbrella and it is placed in Brussels, and it has as its main target is to defend the interests of all European consumers. This entity has some priorities as far as it concerns consumers' protection. These are consumer contracts, digital right, energy, financial services, food, consumer redress, health, safety and sustainability.

The European Consumer Organization claims that the energy market is characterized by a lot of failures such as non price stability, the absence of a clear tariff policy, the existence of poor service, high prices, no information about consumers to learn the

²⁸ http://ec.europa.eu/consumers/empowerment/cons_networks_en.htm

²⁹ http://ec.europa.eu/consumers/empowerment/eccg_en.htm

³⁰ <http://www.beuc.org/>

know how about the increase of energy efficiency. A real problem about consumers is the access to affordable energy and especially for vulnerable consumers with economic problems. So this organization suggests some proposals in order to give a solution to the problematic function of the energy market.

It proposes that there is a need for the Energy Regulatory Authorities to operate with transparency, that consumers must be supplied with clear and specific information about their energy consumption, that the efficiency should be a key perspective of consumers to the way they handle their electrical equipment.

European Commission stresses that electricity and Gas bills should be clear and specific. They should give the opportunity to energy consumers to understand what they are pay for the energy that they have consumed. They should also let the consumers to compare prices from different energy suppliers in order to change the supplier in the occasion they are not satisfied with him.

Furthermore, European Commission gives very informative advice to the consumers about the energy bills and what way they are user friendly. It organizes campaigns throughout European States to inform consumers analytically for their rights.³¹

Another European entity is the **European Consumer Centers of the European Commission** that provides them with free advice about purchases of services or goods, throughout European Countries. It is very crucial that Consumer Centers have the right of representation of a consumer in a court.

Nevertheless, the Committee of Regions regrets that while the obligations, concerning the protection of consumers, for all the authorities are the same those who have the responsibility often act in different ways by the various categories of organizations (civil society organizations, state or municipal bodies, offices or agencies providing information support), at both European and national level, with limited effectiveness;³²

³¹ http://ec.europa.eu/consumers/citizen/my_rights/energy_en.htm

³² <http://eur-lex.europa.eu>

Every European State has its own organizations about the consumers' rights and their protection. For example in Cyprus, there is the Competition and Consumer Protection Service of the Ministry of Commerce, Industry and Tourism. The purpose of this Agency is to protect the health, safety and financial interests of consumers or to provide with continuous informing and educating on issues that concern consumers and ensuring healthy competition conditions.³³

In Greece, the Ministry of Development Competitiveness, Transport, Infrastructure and Networks and specifically the Directorate of Consumer Protection is responsible for this protection from the side of State.

There are also a lot of Consumer Protection Centers in many cities of Greece.

As far as it concerns energy issues, there is the Greek Energy Regulatory Authority which is an independent administrative authority responsible for monitoring the energy market as it develops - so uniquely in the Greek market - as well as operate and grow in relationship with foreign energy markets, particularly those with which interconnects.

Another authority is **the Greek Consumer Ombudsman**, which is independent and it was set up by Law 3297/2004³⁴ and is regulated by the Ministry of Development. It operates as an extrajudicial body that gives resolution to consumer disputes, but it also operates as an advisory body. With the activation of the Authority, the Greek public administration in line with the recommendation of the European Union participates to the conclusions of the Green Paper on improving the functioning of the Ombudsmen.

Last but not least, in Greece there is also the Consumer Protection Centre which is a non-profit, non-governmental Consumers Union nationwide. For twenty years, striving for the protection of consumer rights, protect the environment and improve quality of life. It was founded in 1982.³⁵

³³ See Official website of Cyprus Ministry of Commerce Industry and Tourism
<http://www.mcit.gov.cy>

³⁴ See Official website of Greek Consumer Ombudsman, <http://www.synigoroskatanaloti.gr>

³⁵ See Official website of Greek Consumer Protection Centre, <http://kepka.org>

CHAPTER THREE

THE ENERGY CONSUMERS' PROTECTION THROUGHOUT EUROPEAN DIRECTIVES

3.1 First Generation Directives on Electricity and Gas

As it is mentioned above³⁶, the first package for the liberalization of electricity market was adopted at 19 December 1996 with the **Directive 96/92/EC**. This Directive was the previous law of the organization of energy markets. It set common rules for the generation, transmission and distribution and trading of electricity. That was a first "coward" step for this liberalization and *mutatis mutandis* it had formed the basis for a new era in energy.

Directive 98/30/EC of the European Parliament and of the Council of 22 June 1998 concerned common rules for the internal gas market. "This Directive establishes common rules for the transmission, distribution, supply and storage of natural gas. It lays down the 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 gas".³⁷

It was the first time that we meet in the European legislation the term *eligible customer*³⁸. In this frame, the European lawmaker proposed Member States to take the necessary measures to ensure that at least a category of customers could be designated as eligible customers. So, eligible customers were, initially, considered the gas-fired power generators, irrespective of their annual consumption level; however, and in order to safeguard the balance of their electricity market, the Member States may introduce a threshold, which may not exceed the level envisaged for other final customers, for the

³⁶ See, in details Chapter One of the dissertation, 1.2. The Previous Law for the Liberalization of Energy Markets

³⁷ Directive 98/30/EC, Art.1

³⁸ See Art.18 (1) of the Directive 98/30/EC

eligibility of combined heat and power producers. Such thresholds shall be notified to the Commission.³⁹

It is really interesting that this directive also referred the occasion of the event of a sudden crisis in the energy market and obliged Member State to temporarily take the necessary safeguard measures where the physical safety or security of persons, apparatus or installations or system integrity is threatened.⁴⁰

The Council mentioned that transparency of gas and electricity prices ensures fair competition throughout the internal market. It can also eliminate discrimination of consumers, by promoting their freedom to choose between different energy sources and between different suppliers,⁴¹ so it set the **Council Directive 90/377/EEC** of 29 June 1990 concerned a Community procedure to improve the transparency of gas and electricity prices charged to industrial end-users.

The lawmaker obliged Member States had to make sure that companies supplying gas or electricity to European end-users sent information relating to prices and conditions of sale of gas and electricity to the consumers to the Statistical Office of the European Communities- Euro stat.

3.2 Second Generation Directives on Electricity and Gas

The roadmap to the fully liberalization of electricity market in Europe was not easy and strewn with rose petals. The first generation of directives offered an optimistic note but they were not enough to cover all the needs and the targets of this liberalization. So the European Council guided to a second generation of Directives on Electricity and Gas.

The Directive 2003/54/EC, which had repealed the Directive 96/92/EC, stipulated that « Electricity customers should be able to choose their supplier freely. Nonetheless a

³⁹ See Art. 18 (2)

⁴⁰ Directive 98/30/EC, Art. 24

⁴¹ Council Directive 90/377/EEC, Recital, general provisions

phased approach should be taken to completing the internal market for electricity to enable industry to adjust and ensure that adequate measures and systems are in place to protect the interests of customers and ensure they have a real and effective right to choose their supplier. »⁴²

This Electricity Directive has principal and innovative targets⁴³ such as to protect the rights of vulnerable customers, to reduce risk of market dominance and predatory behaviour, to ensure the non-discriminatory transmission and distribution tariffs and to ensure competition in the generation sector.

In terms of the Directive's priorities in Chapter II are the significant rules applicable to 'Public Service Obligations (PSOs) and consumer protection as well as the implementation of a supplier of last resort. This supplier can be a vertically integrated undertaking by a sales division, which can also execute functions of distribution, respecting the requirements of unbundling of this Directive.⁴⁴

Consumer protection, as it is mentioned above, is one of the priorities of this Directive. All Community citizens should be able to enjoy high levels of consumer protection.⁴⁵ A detailed and analytical way of consumers' protection is included in the Directive.⁴⁶

Consumers must be given adequate information on applicable prices and tariffs and they also must be offered a wide choice of payment methods and they mustn't be charged in the occasion they want to change supplier.

Moreover, Member States must notify to the Commission in a detailed way, all measures that they take in order to guarantee Universal and Public Service as far as measures on consumer and environmental protection.⁴⁷

The Directive declares that 'respect of the Public Service requirements is a fundamental requirement'.⁴⁸ The provisions on PSOs and consumer protection can be categorized in three different groups. The first group concerns the obligation of the

⁴² Directive 2003/54/EC, Recital, Art.20

⁴³ Electricity Directive, Recital Art. 2

⁴⁴ Electricity Directive, Recital Art. 27.

⁴⁵ Recital Art. 19.

⁴⁶ See Annex A. Relevant also in the context is the DG TREN Interpretation Note, 'Practical Measures for Distribution Resulting from the Opening Up to Competition', 16 January 2004.

⁴⁷ Electricity Directive, Art.3 (9).

⁴⁸ Electricity Directive, Recital 26; Gas Directive, Recital 27.

Member States to guarantee Universal Service in electricity⁴⁹ and to ensure the protection of customers in various ways⁵⁰; to publish PSOs⁵¹ ; to ensure that eligible customers can easily switch supplier.⁵² There is also a positive duty to protect final customers especially vulnerable customers.⁵³

Universal Service is an important innovation of this directive and it is defined as the right to be supplied with electricity of a specific quantity at reasonable, transparent and comparable prices.⁵⁴ It can be extended to all household customers and to all small firms but the last one depends on the decision of Member States.⁵⁵ It has to be mentioned that this does not apply to gas.

Most of the accession countries have lifted the monopoly of the incumbents⁵⁶ but the number of opening is between 10% and 64% for electricity and between 25% and 80% for gas.⁵⁷

The Directive designated the definition of all kinds of customers such as wholesale customers, final customers, household customers, non-household customers and eligible customers. It pinpointed that all household customers should enjoy universal service, in order to be supplied with electricity of a specified quality within their territory at a reasonable and transparent price. In contrast, at the precursor law there wasn't definitions of specific subjects.⁵⁸

Furthermore, the above- mentioned Directive extends the liberalization of the electricity market to all non-household consumers by July 2004 and to all customers until July 2007.

Additionally, all Member States must designate one or more competent bodies as regulatory authorities, who must be really independent of the interests of the electricity

⁴⁹ Electricity Directive, Art.3 (3).

⁵⁰ O.p.c, Art.3 (5) and (6) and Annex A.

⁵¹ Art.3 (2).

⁵² Art.3 (5).

⁵³ Art.3 (5).

⁵⁴ Electricity Directive, Art.3 (3)

⁵⁵ Recital 24 , Electricity Directive

⁵⁶ P. D. Cameron, '*Legal Aspects of EU Energy Regulation*', 2005, p.56

⁵⁷ See the Third Benchmarking Report, page 4.

⁵⁸ Electricity Directive, Art.3

industry⁵⁹. These authorities must monitor the energy markets and they have also supervisory powers of the energy market in all sectors, namely electricity generation from fossil fuels, renewable energy and natural gas.

After a detailed study of the Electricity Directive, the emphasis to the protection of Energy Consumers is clear.

The Directive 2003/55/EC (Gas Directive), which had amended the Directive 98/30/EC set common minimum standards to ensure high level of consumer protection (right switching, transparency of contractual conditions, general information, dispute resolution mechanisms, etc.), with particular attention to ensuring adequate protection of vulnerable consumers (for example, by taking appropriate measures to enable the avoidance of interruption of gas supply). Practically, from 1 July 2004 for industrial customers and from July 1, 2007, the residential customers can freely choose their supplier of natural gas. Market opening is closely linked to the quality goals of service, universality of service, consumer protection and security of supply.

Gas supply is a service of general interest, in which citizens have access against payment. On that basis, the Directive instructs to Member States to impose public service in order to achieve security of supply, economic and social cohesion, regularity of supply, quality and price of gas supply and protection of the environment.

Each Member State must designate its transmission system operators, administrators, stocks etc. Their mission is the operation, maintenance and development of transmission and distribution facilities, storage and liquefied natural gas (LNG). They are obliged to ensure the reliability, efficiency and interconnection facilities in a friendly environment.

Network Operators should ensure that all users access the network without discrimination and transparency. Also, the access should be based on an objective and correct pricing. Network Operators may not favor certain companies, including companies that may be associated with them. In order to avoid any discrimination on access to the network and to provide equal access for newcomers, if companies are vertically integrated, the transmission and distribution activities should be distinct, legal

⁵⁹ Electricity Directive, Art. 23.

and operational terms of other activities, such as generation and supply activities. However, this separation does not imply ownership unbundling.

The Gas Directive does not have an equivalent provision of ‘universal service’ as it has the Electricity Directive. It does only mention that Member States have to ensure that when customers are connected to the gas system, they are informed about their rights to get supplied with natural gas at reasonable prices.⁶⁰

The difference between gas and electricity justifies the absence of universal service because except from gas it can be used a different primary source of energy such as oil but the dependence on electricity is more trenchant than this on gas.

Additionally, in many Member States the gas network only covers part of national territory and many households are not connected within areas where transmission and distribution lines exist.⁶¹ In practice, paragraph (f) of Annex A of the Gas Directive may lead Member States to give the responsibility to the Regulatory Authority to deal with complaints regarding the transparency and consumer protection issues that have to do with Annex A.⁶²

The European legislator with the second generation Directives on Electricity and Gas had as a target to manage the real free Network Access but it has become commonplace that this free Network Access has not yet been achieved because the network opening is incomplete and not uniform.

Additionally, both of Electricity and Gas Directives determined the legal unbundling and ‘the independent network operators ‘ where they are part of a vertically integrated energy supply company’’.⁶³ An analytical manner of the functioning of legal unbundling has been included in the progress report derived by the European Commission.⁶⁴

⁶⁰ Gas Directive, Recital 26.

⁶¹ *Ch. W. Jones*, EU Energy Law, 2nd edition, 2006, Claeys Casteels, par.10.32, p.247

⁶² O.p.c, par.10.33, p.250.

⁶³ Electricity Directive, Arts 10 and 15; Gas Directive, Arts 9 and 13

⁶⁴ Art.28 (3), European Commission, Report on Progress in Creating the Internal Electricity and gas Market: Technical Annex, Com 2005, 568 Final, 15 November 2005, p.78- 84.

Finally, it hadn't been decided by the legislator to provide effective application of penalties for the non-observance of unbundling obligations by vertically integrated energy companies.⁶⁵

It could be said that the second generation Directives on Electricity and Gas had offered considerable progress for the effective functioning of the European energy markets and they have contributed to the market opening. The most significant step was the irreversible right of the consumers to choose their supplier.

But on the other hand, a broad consensus is agreed to the concept that the distribution sector and especially the wires function will remain a regulated monopoly in the near term.⁶⁶

3.3 Third Generation Directives on Electricity and Gas

The EU had put in place an ambitious energy policy in an effort to improve the functioning of the internal electricity market, as huge amounts of money from private and public sources, flowing into EU energy policies and could boost the economies of EU Member States. The Third Energy Package aimed to strengthen the competitiveness and allowed gas companies to maintain their leads, assuming they really were working as separate entities.

The third legislative package was adopted and entered into force in September 2009. According to the legislation, the Member States should transfer it into national law within 18 months. The third package of energy includes key provisions for the proper functioning of energy markets, including new rules to enhance the independence and powers of national regulators and rules to improve the operation of retail markets for the benefit of consumers. One of the innovative elements of this package is the Regulation for establishing an Agency for the Cooperation of European Energy Regulators (ACER). The **Regulation (EC) No 713/2009** of the European Parliament

⁶⁵ P. D. Cameron, 'Legal Aspects of EU Energy Regulation', 2005, p. 44.

⁶⁶ St. Ferrey, *The New Rules*, 2000, p.338.

and of the Council of 13 July 2009 established an Agency for the Cooperation of Energy Regulators.

In the third legislative package are included the **Directive 2009/72/EC for the Electricity Market and the Directive 2009/73/EC for the Gas Market**.

The **Directive 2009/72/EC** of the European Parliament and of the Council of 13 July 2009 concerned new rules for the internal market and it had repealed the Directive 2003/54/EC. The Recital of the Directive 2009/72/EC mentions that ‘‘The internal market in electricity aims to deliver real choice for all consumers of the European Union, be they citizens or businesses, new business opportunities and more cross-border trade, so as to achieve efficiency gains, competitive prices, and higher standards of service, and to contribute to security of supply and sustainability.’’⁶⁷

Although the Directive 2003/54/ EC has made a significant contribution to the completion of the fully liberalized internal market in electricity , at present, ‘‘there are obstacles to the sale of electricity on equal terms and without discrimination or disadvantages in the Community. In particular, non-discriminatory network access and an equally effective level of regulatory supervision in each Member State do not yet exist.’’⁶⁸

It is commonly accepted that there is a real need to secure competition and the supply of electricity at the most reasonable price. In order to manage this, the European Legislator proposes Member States and National Regulatory Authorities to make the cross- border access easier for new suppliers of electricity as well as for new providers of power generation. The ratio of the Legislator confirms that ‘‘without effective separation of networks from activities of generation and supply the unbundling won’t be effective and moreover there is an inherent risk of discrimination in the incentives for vertically integrated undertakings to invest adequately in their networks’’.⁶⁹

The Scope of the Unbundling is to secure the fair and non-discriminatory access to the grid. There are three Elements as far as it concerns the Unbundling, the Legal, the Functional and the Accounting. **Ownership Unbundling**, which can be characterized as

⁶⁷ Recital of the Directive 2009/72/EC

⁶⁸ Directive 2009/72/EC

⁶⁹ Recital of the Electricity Directive, paragraph 9, p.2

the ideal model, did not exist in the previous legislation so it is something new. When somebody refers to the Ownership Unbundling means that the same person or persons are not entitled to exercise control over a generation or supply undertaking and at the same time exercise control or any right over a transmission system.

There is no specific regulation about the exercise control, it is a case law. The third liberalization package refers only to the transmission system.

Furthermore, the Green Paper states also for networks towards a secure, sustainable and competitive European energy network. It reports that ‘‘Network development is an important element of energy policy. The emphasis of EU network policy has been to "plug gaps" in networks or deal with "bottlenecks", for internal security of supply reasons. This is important, but not enough to deal with global security of supply challenges, to benefit from new technologies, to diversify energy sources and to assure solidarity in an energy crisis. EU network policy needs to be fully aligned with EU energy policy.’’⁷⁰

Through this Green Paper, the Commission stresses the target to develop the energy networks of the Member States of the Union and to integrate them better so as to enhance the operation of the internal energy market.

To come back to the **significant Electricity Directive of 2009**, Chapter II of this Directive promotes the general rules for the organization of the electricity sector and especially to the consumers’ protection. It states that ‘‘Member States, with regard to the principle of subsidiarity, must ensure the achievement of a competitive, secure and environmentally sustainable market in electricity, and shall not discriminate between those undertakings as regards either rights or obligations’’.⁷¹ Moreover Member States must guarantee Public Service Obligations and ‘‘security of supply, regularity, quality, environmental protection. Such obligations shall be clearly defined, transparent, non-

⁷⁰ Green Paper - Towards a secure, sustainable and competitive European energy network, Art. 2(1).

⁷¹ Electricity Directive of 2009, Chapter II, Art.3 (1).

discriminatory, and verifiable and shall guarantee equality of access for electricity undertakings of the Community to national consumers”⁷².

Additionally, Member States shall ensure that all household customers enjoy universal service and the provision of a supplier of last resort (within three months);⁷³ they have to ensure that all customers are entitled to have their electricity provided by a supplier⁷⁴, when a customer wish to change supplier, the change is effected by the operator(s) concerned within three weeks; and customers are entitled to receive all relevant consumption data⁷⁵; to ensure that there are adequate safeguards to protect vulnerable customers who may suffer from energy poverty and, inter alia, to the prohibition of disconnection of electricity to such customers in critical times.⁷⁶ Moreover, Member States shall implement measures to achieve the objectives of social and economic cohesion and environmental protection.⁷⁷

The Recital of this Directive reflects the spirit of the Law Maker and it supports the idea that ‘‘a well functioning European Market in Electricity should give the appropriate incentives for investing in new power generation, paying the suitable attention to the isolated countries throughout the European Community’’.⁷⁸ Eligible Customers should be able to change supplier easily⁷⁹ and Member States should take the necessary measures to ensure that there are adequate safeguards to protect vulnerable consumers. As regards, the identification of vulnerable consumers has to do with three possible criteria, firstly with personal health, then with energy poverty and finally with medical criteria. It is significant that almost all countries in Europe have adopted a definition for vulnerable consumers apart from Norway.

The Electricity Regulation 714/2009 of 13 July 2009⁸⁰ concludes fair rules for cross-border exchanges in electricity, sets itself the aim of enhancing competition within the

⁷²O.p.c, Art.3 (2)

⁷³ Art.3 (3).

⁷⁴ Art.3 (4).

⁷⁵ Art.3 (5a, 5b)

⁷⁶ Art.3 (7).

⁷⁷ Art.3 (10).

⁷⁸ Electricity Directive, Recital par. 6.

⁷⁹ Art.3 (5).

⁸⁰ Green Paper - Towards a secure, sustainable and competitive European energy network

internal electricity market and it facilitates the emergence of a well functioning and transparent wholesale market with a high level of security of supply in electricity.

The **Directive 2009/73** (Gas Directive), which has repealed the Directive 2003/55/EC sets general rules for the organization of the natural gas sector, the rules for the transmission, the storage of natural gas, the rules of distribution and supply, the organization of access to the system, the role of natural regulatory authorities in the operation of the sector and principal rules of the operation of the retail market and for the complete of a competitive market in natural gas.

One of the major instruments for completing a competitive market in natural gas is Third Party access (TPA) which gives to suppliers and customers the right to have their gas transported through pipelines that they do not own or control. ‘‘ Third party access implies a regulation of the market for gas *transportation*. The goal of the Gas Directive, however, is increased gas-to-gas competition, i.e. increased competition among *gas suppliers*. This regulative technique is mainly due to two fundamental economic and structural aspects of the European gas sector that have led to limited competition in the European gas sales markets’’.⁸¹

However, the right of access is explicitly defined in the Gas Directive and there is full acceptance of this right. A further and important characteristic of the right of access according to the Directive is the relationship with the underlying gas sales agreement.

But on the other side there is a different view. **Ketil B e Moen**, assistant Advocate at Attorney General of Civil Affairs in Norway after a scientific Research under ‘the European Gas Project’ at Centre for European Law, indicated that ‘‘ The Directive seems to presuppose that the gas volumes are physically transported from the suppliers to the customers, and that TPA is the instrument by which the supply agreement is carried out. On this background, Member States may probably limit the right of access to certain end users, the eligible customers, and to those suppliers intending to enter into a supply agreement with one of these customers. This indicates that the right of access

⁸¹ *Ketil B e Moen*_Assistant Advocate, Attorney General of Civil Affairs, Norway, The Gas Directive: Third party transportation rights- But to what pipeline volumes?, p.7

should be described as a right to have gas *transported* or simply as a *transportation* right, rather than a *capacity* right”⁸².

The Gas Directive has as one of its main targets the protection of the customers and especially the vulnerable customers which may suffer from energy poverty or disconnection of gas in remote areas.⁸³ Member States have to appoint a supplier for last resort and ensure the eligible customers that they are really able to change supplier with no charging extra.⁸⁴ Conditions of the contract must be fair and well known to the customer in advance⁸⁵ having the right to receive transparent information on applicable prices and actual gas consumption⁸⁶ and a wide choice of payment methods which do not discriminate between customers.⁸⁷

But there is real evidence that not all the Member States comply with their obligation imposed by European law in order to complete the internal energy market by 2014. To achieve this, it is vital to transpose the EU legislation to the national law. That’s the reason why the European Commission at 27 February 2012 had issued a press release⁸⁸ which referred that the national legislation in 8 Member States still not in line with EU rules.

The Commission mentioned that the opening of energy markets to competition is crucial for the competitiveness of the EU economy as a whole. Effective, transparent and interconnected European internal energy market would also offer consumers choice between different companies to be supplied with natural gas and electricity and will make the market accessible for all suppliers. It also mentioned that the directives on electricity and natural gas in the third package of energy had to be transposed by

⁸² *Ketil Bøe Moen*_Assistant Advocate, Attorney General of Civil Affairs, Norway, *The Gas Directive: Third party transportation rights- But to what pipeline volumes?*, p.8

⁸³ Directive 200/73/EC, Art..3 (3)

⁸⁴ Annex 1 par (e)

⁸⁵ Annex 1 par (a)

⁸⁶ Annex 1 par (i)

⁸⁷ Annex 1 par (d)

⁸⁸ European Commission, Press Release, 27 February 2012, Brussels

Member States into national law until March 3, 2011. So far, Bulgaria, Cyprus, Spain, Luxembourg, Netherlands, Romania and Slovakia have not informed the Commission of any measures to transpose the two Directives, while Estonia has not done regarding the directive on natural gas. Consequently, the Commission had sent reasoned opinions to the above Member States to encourage them to comply with their obligation imposed by European law. Member States had two months at their disposal to respond otherwise the Commission may refer them to the Court of the European Union.

In general terms, the third legislation package had offered an effective unbundling of transmission activities from the activities of generation and supply. It managed to promote competition at regional electricity markets in order to complete the internal energy market and to increase transparency and better functioning of the retail market. As far as it concerns consumers, it established obligations utilities with combating energy poverty and implementation of intelligent metering systems and their protection through well established rights.

Furthermore, the third legislation package had managed to strengthen solidarity and regional cooperation between Member States to ensure security of supply. Moreover, the European Commission, at the request of the Council, attempted to promote Regulatory Cooperation through the recently adopted legislation aimed at reforming the institutional framework for energy and the acceleration of the liberalization of the European gas and electricity market⁸⁹. For this reason, firstly it had completed the establishment of an Agency for the Effective Cooperation between National Regulators (ACER) in order to be covered the Regulatory gap at the Community level and secondly, the enactment of mandatory cooperation of Transmission System Operators (ENTSOs) to harmonize all rules governing the transfer of energy in Europe and to ‘facilitate access to information by all market participants and stakeholders in promoting the transparency. Access to entsoe.net core

⁸⁹ See Official website of the Regulatory Authority in Greece, http://www.rae.gr/site/categories_new/international/osrae.csp

market information services is **free of charge and open to anybody** who has a legitimate interest in Europe's evolving wholesale electricity market.’⁹⁰

In Greece, the company that manages the Greek System Operators for Electricity is the SA GREEK TRANSMISSION SYSTEM OPERATOR (or System Operator or TSO).⁹¹ The aim of the TSO is to ensure a reliable and impartial functioning of the Greek System Operator and the market based on this so that new producers, eligible customers and all consumers have the traditional reliability of the System that is now 50 years serving Greece, surrounded by transparency and impartiality required by the rules of the new market.

3.4 The Lisbon Treaty: a big step in the Energy Policy

Europe is going to address major challenges such as climate change, increasing dependence on energy imports, increasing concern about energy sources and the need to ensure access for all consumers in economical and safe energy. The international situation and the existence of concerns related to energy issues have shown how important is a European policy on energy.

The EU had launched, with the Lisbon Treaty, a European energy policy covering the full range of energy sources from fossil fuels (oil, gas, coal) to nuclear power and renewable energy in order to address these challenges. The Lisbon, welcomed the new EU Treaty with fireworks on December 2009. With this Treaty, the EU had as its main objective to make energy more sustainable and safe and to ensure low prices for consumers. The Lisbon Treaty has given a new energy policy more optimistic and specific which lacked from previous Treaties.⁹²

Finally, the Lisbon Treaty referred to the "spirit of solidarity" which should prevail between Member States in the implementation of European energy policy. Such solidarity would seem particularly useful in times of crisis; whether one or more

⁹⁰ See Official website of ENTSO-E , <https://www.entsoe.net/default.aspx>

⁹¹ See Official website of SA Greek Transmission System Operator, <http://www.desmie.gr>

⁹² See Art.94 of the Treaty of Lisbon

Member States have to deal with interruption of supply could then calculate the energy supply from other States.

CHAPTER FOUR

THE LEGISLATIVE FRAMEWORK OF THE ENERGY CONSUMERS' PROTECTION IN GREECE

4.1 The Greek Law 2773/1999 and 3426/2005 for the liberalization of Electricity Market in Greece

As it is widely accepted, one of the basic principles of the European legislative framework for the liberalized energy market is the right of customers to choose freely their supplier and vice versa of the supplier to choose his customer.

The Greek Legislative framework obeyed to the letter of that basic European principle and with the **Greek Law 2773/1999** it specified the meaning of the ‘‘Eligible customers’’ and stated that they are the persons who have the right to choose their energy supplier.⁹³ Furthermore, this Law referred that all consumers are defined as eligible customers except customers that are connected with an isolated micro grid.⁹⁴ The Production, Transportation, Distribution and Supply of electricity in Greek territory were conducted until 2010 by this law.⁹⁵

To be more precise, this law set the basic framework for the regulation of the deregulated electricity market which took effect from February 2001 in accordance with Directive 96/92/EC of the European Union. It provided the establishment of the Regulatory Authority for Energy (RAE) as independent and autonomous administrative authority supervised by the Minister of Development and competencies, the establishment of the Electricity System Operator supervised by RAE and the conversion of Public Power Corporation to Societe Anonym.⁹⁶

⁹³ Greek Law 2773/1999, Art.2

⁹⁴ Art.25 (1)

⁹⁵ Greek Law 2773/1999

⁹⁶ <http://www.rae.gr>

The Greek lawmaker, aimed at speeding up the electricity market, was progressed in the adoption of the **Law 3426/2005** which had replaced some provisions of the previous **Greek Law 2773/1999** in order to make them more specific and complete. For example, System Operators and Network Operators have the obligation to ensure access to eligible customers upon their request to the grid or to the network.

4.2 The Greek Law 4001/2011 for the transposition of European Directives 2009/72, 2009/73/EC and the consumers' protection

At summer 2011, the Greek lawmaker enriched the Greek legislative framework with the Law 4001/2011 for the organization of the electricity and natural gas market in Greece.

The purpose of the **Law 4001/2011**⁹⁷ is to integrate the provisions of i) the Directive 2009/72/EC of the European Parliament and the Council of 13 July 2009 for the operation of the internal market in electricity and of i) the Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 for the operation of the internal market in natural gas.

It should be noted that Greece was one of the first EU countries which have fully integrated the obligations of the third Energy Package of the EU and fulfilled obligations such as the Unbundling of transmission and distribution of electricity, the Strengthening of the role and the independence of the Regulatory Authority for Energy etc.

According to Panagos, the rapid transfer of the third generation directives in the Greek legislative framework was held due to pressure from the so-called "Troika" to carry out the application of the memorandum, the contract signed by Greece with the European

⁹⁷ Greek Law 4001/2011, Government Gazette, sheet number 179, 22 August 2011

Commission, the International Monetary Fund and the European Central Bank for the provision of facilities to lenders serve the public's needs.⁹⁸

The fact that, the **Greek lawmaker had a rational and a crystal disposal to protect the energy consumers** from the very begging of this law, **is very important**, as this protection is **an element of public interest**.

He gives a definition of the **energy poverty** which is ‘‘the state of consumers in which, they are in difficult position because of low income, family circumstances and special situations such as health, to cover expenses for reasonable per- needs to get supplied electricity or natural Gas’’.⁹⁹

It could be said that this law is more descriptive than the previous laws, which concerned the consumers’ rights, and provides them with specific provisions in order to clarify their rights.

It’s very significant that for the first time, at the provisions of the Directive 2009/72/EC, **are specified the criteria that relate to the protection of Vulnerable Customers**.

For that reason, the Greek lawmaker gives a clear definition of **Vulnerable Customers**¹⁰⁰ and he categorized them in five different groups.¹⁰¹ The first category has to do with Customers who suffer from energy poverty.¹⁰² Then at the second category are included these Customers that are in need of mechanical support and particular persons who require continuous supply of electricity, without limitation, to support mechanical respiratory or cardiac devices for vital functions.¹⁰³ At the third category are included the Elderly Customers, who have completed their seventieth (70th)

⁹⁸ See *Th. Panagos*, *The Legal Framework of the Energy Market. The organization and operation of the liberalized energy market in Greece*’, 2012, Preface

⁹⁹ Recital of the Law 4001/2011, Art.2 (h)

¹⁰⁰ O.p.c, Art. 2 (i).

¹⁰¹ Law 4001/2011, Art.52

¹⁰² O.p.c, Art 52 (a)

¹⁰³ O.p.c, Art.52 (b)

birthday, provided that they do not cohabit with another person who has not attained the above age limit.¹⁰⁴

The fourth category has to do with Customers with serious health problems, especially those with severe physical or mental disabilities, intellectual disabilities, severe audiovisual or motional problems, or multiple disabilities or chronic illness and they can not manage to negotiate their contractual relationship with their Supplier.¹⁰⁵ At the last category are included Customers that leave in isolated areas, especially in the non-interconnected islands and they are entitled to the same services both in terms of prices and quality, security of supply and transparency of contractual terms and conditions with other Customers.¹⁰⁶

Depending on the difficulties faced by each category, it may be taken additional steps for the consumers' protection, especially reduced tariffs or discount on published tariffs of each Supplier, more favorable terms of payment accounts, alternative ways to access Customer service and bill paying.¹⁰⁷

The criteria, conditions and process of the integration of a Customer in the category of Vulnerable are determined by the Minister of Environment, Energy and Climate Change.¹⁰⁸

Regulatory Authority in Greece controls and monitors the compliance with the obligations provided for Vulnerable Customers and it has the responsibility to impose sanctions under the provisions of the Article 36 about administrative penalties, if there is violation of these obligations.¹⁰⁹ By decision of RAE, issued after the hearing of the two parties, a fine can be imposed on Owners and Managers of Electricity grids and Gas Companies engaged in Energy Activities if they violate the provisions of this law. In such occasion, they are granted with fines up to 10% of their annual turnover. The fine is proportional to the severity and frequency of the violation.¹¹⁰

¹⁰⁴ O.p.c, Art 52 (c)

¹⁰⁵ O.p.c, Art 52 (d)

¹⁰⁶ O.p.c, Art 52(e)

¹⁰⁷ Art 52(2)

¹⁰⁸ Art 52(3)

¹⁰⁹ O.p.c

¹¹⁰ See Art.36 (1)

In Greece, the Regulatory Authority (RAE) supervises the implementation of measures to protect the rights of the Customers. RAE, by decision, can oblige the Transmission System Operator to provide consumption data to the Customers, without charge.¹¹¹ Furthermore, RAE investigates complaints of Customers and it specializes in regulatory decisions issued under its authority. Issues on civil or on commercial disputes are not tested by RAE.¹¹²

Eligible Customers enter into electricity supply contracts with Electricity Supply license Holders .With these contracts is regulated the economic relation between Customer and Supplier. Eligible Customers shall be entitled to import their own electricity for their own exclusive use and this activity is legally treated as Supply.¹¹³ Moreover, Eligible Customers are entitled to choose freely their Supplier and they can be supplied with electricity simultaneously from several Suppliers.

The switching process does not entail any financial burden to the customer and it does not relieve customer from fulfilling his contractual commitments.¹¹⁴

Law 4001/2011 gives the right to Household Customers to withdraw without penalty from the supply contract within fourteen (14) days, unless a longer period is agreed¹¹⁵, if the Supplier will not deliver to them the data specified to Supply contracts, and provide them with information such as the integration of a Customer in the categories of Vulnerable Customers and information about the access of the Customer in the Service of the last resort and Universal Service.¹¹⁶ Moreover, the electricity Suppliers are obliged to take all the appropriate measures to ensure equal treatment for customers in

¹¹¹ Law 4001/2011, Art.24 (2)

¹¹² O.p.c. Art. 24 (3)

¹¹³ See Law 2773/1999. Art.2

¹¹⁴ Law 4001/2011, Art. 47 (1)

¹¹⁵ Art. 47 (3)

¹¹⁶ Art. 48 (1c)

isolated areas and to protect vulnerable customers.¹¹⁷

Furthermore, the Supplier is obliged to provide the Customer with information on: (a) the contribution of each energy source to the overall fuel mix during the previous year in an understandable and clearly comparable manner. (b) the environmental impact, in terms of emissions of CO₂, which is the result of the production of electricity from the overall fuel mix of the supplier over the preceding year.¹¹⁸

Each supplier is required to apply for requests and customer complaints. The procedure for the submission and management of these requests and complaints must be designed to ensure optimal customer service.¹¹⁹ This process must be carried out in an easy, inexpensive and non-discriminatory way between different categories of customers. RAE controls and monitors compliance with the obligations relating to the procedures and management requests and customer complaints.

There is one provision when the Supplier can refuse to specific Customer to supply with electricity, if there are serious reasons, such debts of the Customer at another Supplier. The conditions of this refusal must be clearly formulated and delivered to the customer in advance especially during the negotiations for the conclusion of the supply contract.¹²⁰

Moreover, another right of the Customer that is protected from this law is the free, easy and non-discriminatory access to information that allows him to choose the right supplier for him.¹²¹ Each Supplier must comply with the principle of transparency and publish general statistical data collected about customers as well as information on its activities.¹²²

¹¹⁷ Art. 48 (1d), (1e)

¹¹⁸ Art.48 (2)

¹¹⁹ Art.48 (4)

¹²⁰ O.p.c (5)

¹²¹ See, Art.49 (1)

¹²² Art.49 (4)

Suppliers and Customers are required to make every effort to resolve amicably any difference or dispute arises from the interpretation of the purchase contract and the relevant provisions of the Supply Code for Electricity and Gas.¹²³ For any dispute between the Customer and the Supplier, Customer may contact the Greek Consumer Ombudsman, according to the Law 3297/2004(A' 259), or any other competent body set up by the law.¹²⁴

Public Service Obligations (PSO's) are included in this law with the target to **protect Vulnerable Customers**, security (including security of supply), regularity, quality and price of supply, and environmental protection, including energy efficiency, renewable energy and climate protection.¹²⁵ Obligations of **Public Service** should be transparent, fair and verifiable, to ensure to Customers equitable access to electricity and natural gas and they must not hinder the competition.¹²⁶

For electricity, the annual charge of Customer, at position consumption, must not exceed 773.531 euro. This threshold shall be adjusted during the first quarter of each year by decision of RAE under annual change in consumer price index as published by the Greek Statistical Authority (ELSTAT).¹²⁷

The provisions of the new national legislation governing the energy sector introduce a comprehensive framework arrangement for the provision of Services of General Economic Interest (SGEI).¹²⁸ This legislative framework is clearly improved compared with the predictions of previous legislation and it responds heavily on the requirements of the European legislation and energy markets.¹²⁹

The existence of a Supplier of last resort is the consequence of the exercise of the right of Universal Service. With the provisions of the new legislation is organized the

¹²³ Art.50 (1)

¹²⁴ Art.50 (2)

¹²⁵ Art.55(1)

¹²⁶ Art.55(2)

¹²⁷ Art.55(7)

¹²⁸ Law 4001/2011, Art. 55 and 56

¹²⁹ See *Th. Panagos*, *The Legal Framework of the Energy Market. The organization and operation of the liberalized energy market in Greece*, 2012, p.100-101

function of the Supplier of last resort. Similar prediction there was at the previous law but it can not be seen as clear regulation.

The target of the legislator is to secure the right of the Consumer to be provided with electricity or natural gas and to avoid possible disruption of the service due to the fault of the Supplier.

As a general conclusion, **the positive side of the Law 4001/2011** includes the adoption of a single legislative framework governing the electricity and the gas market in Greece, a better and richer listing of definitions and **a fuller and deeper arrangement of special interests** such as **the protection of consumers**, the guarantee of the last resort, the **Public Service Obligations** and the upgraded responsibilities of The Regulatory Authority in Greece.

But every coin has two sides and in the occasion of the Greek Law 4001/2011, **the predominant is the political dimension not the technocratic.**¹³⁰ **The Greek lawmaker did not manage to escape the political expediency.** So this is not a very good legislative initiative and it needs corrective measures in order to make more functional the two major energy markets.

It should be noted that in Greece all the above provisions of the directive have been incorporated in the **Greek Supply Code** which regulates the rights and the obligations of Customers and Suppliers, both at the stage of contract negotiations between them and in the fulfillment of their contractual obligations.¹³¹

The Supply Code to customers was conducted by the Energy Regulatory Authority and then it approved by the Minister of Development and published in the Government

¹³⁰ See *Th. Panagos*, *The Legal Framework of the Energy Market. The organization and operation of the liberalized energy market in Greece*’, 2012, **Preface**

¹³¹ See the Greek Supply Code, Art.1 (1)

Gazette.¹³² The Supply Code determines the ways and the terms of the procurement contracts, the amendment and termination of them.

The **Greek Supply Code** defines the basic categories of Customers such as Residential Customers, Rural Customers, Business Use Customers and Customers with high, medium and low voltage¹³³ and especially the Vulnerable Customers according to the provisions of the Law 4001/2011.¹³⁴

Every Supplier is obliged to prepare, publish and apply Codes of Conduct Communication with the client, which is monitored by the Regulatory Authority.¹³⁵ In order to inform his customers for the provided services, the Supplier is obliged to establish and publicize an e- Form for the Electricity Services.¹³⁶

The Supply Offer to Customers must be in a written form and **it is binding on the Supplier side.**¹³⁷ It must include the general conditions of the supply contract, complete and detailed wording of the offered invoice.¹³⁸

The Supplier is not allowed to require from the Customer a deposit that exceeds the amount of bills that reflect real consumption for a period exceeding two months but he may request guarantees from customers when signing supplying contracts to ensure future debt.¹³⁹

The Customer can, at any time, terminate the supply contract in a written form within thirty days of receiving knowledge of the intention of the supplier to amend the contract and especially to increase of charging of electricity.¹⁴⁰

¹³² Art.27 (1)

¹³³ O.p.c, Art. 2 (d)

¹³⁴ Art. 2 (e)

¹³⁵ Greek Supply Code, Art.4 (3)

¹³⁶ O.p.c, Art.9 (1)

¹³⁷ Art.16(1)

¹³⁸ Art.16 (1b)

¹³⁹ Art.19 (1,2)

¹⁴⁰ Art.21 (1,2)

If the Customer violates some terms of the supply contract, the Supplier must inform the Customer giving him no fewer than thirty days and for **Vulnerable Customers this deadline is extended for thirty more days.**¹⁴¹ Furthermore, the Supplier may provide **the payment of the bills in installments specifically for Customers who are economically weak.**¹⁴²

Another significant right of the Consumer, that is protected from the Greek Supply Code, is his ability to appeal to the Greek Consumer Ombudsman who acts as an extrajudicial dispute resolution body in any case of dispute with the Supplier in accordance with law 3297/2004.¹⁴³ In an occasion that the dispute won't have a resolution the Regulatory Authority takes the responsibility to examine the case.¹⁴⁴

4.3 'The compatibility of the specific charge to Greek consumers to electrified surface, to the European legislative framework of deregulated energy market'.¹⁴⁵

The author of this scientific paper touches a current key issue which concerns the Greek energy Consumers. It was imposed an extra fee to them with the article 53 of the Greek Law 4021/2011 for the reason of public interest. It had been foreseen that this special fee will be charged, via the electricity bill of the Public Power Corporation S.A and alternative energy suppliers and in the case of non-payment, the connection to the electrical grid will be interrupted.

But network access to the energy supply and to the grid is a basic configuration, and pursuit of European legislation and this access must be provided with a non-discriminatory and transparent manner at reasonable prices.¹⁴⁶

¹⁴¹ Greek Supply Code, Art.21 (5,6)

¹⁴² Art.29 (3)

¹⁴³ Art.34 (2)

¹⁴⁴ Art.34 (3)

¹⁴⁵ see Scientific Paper of *Th. C. Panagos*, Nomiko Vima, 2012, p.511

¹⁴⁶ see statement 4 of the Preamble of the Directive 2009/72/EC in conjunction with Art. 32

The right of the Consumer to universal service is European acquit governing the liberalized energy market and also the electricity is necessary for the survival of the Consumer and any deprivation of it endangers his health, his life and his dignity.¹⁴⁷ In addition, one of the most important principles for each jurisdiction is the inviolability of human dignity. The Greek Constitution enshrines this principle explicitly¹⁴⁸ so the interruption of the connection to the electrical grid, in case of non payment of this special fee, comes in conflict with the national and European law.

¹⁴⁷ See scientific paper of *Th. C. Panagos*, *Nomiko Vima*, 2012, p.511

¹⁴⁸ Greek Constitution, Art.2 (1)

CHAPTER FIVE

THE LEGAL PROTECTION AFFORDED TO THE ENERGY CONSUMERS'

5.1 Legal protection afforded to the Energy Consumers through European Directives

It is surely widely accepted that "legal protection" of consumers has significant value and it is referred to the exercise of consumers' rights in case that it is observed prejudice of their rights.

The European Union has adopted legislative rules aimed at protecting the financial and legal interests of consumers in their dealings with professionals and in case of disputes.

The Union banned mainly commercial practices considered unfair, facilitated the amicable settlement of disputes and harmonized process of injunctions for the protection of consumer interests. The European Union also made efforts to enhance legal certainty, by harmonizing the rules for certain transactions, such as financial services.

In the legal text of the first Generation Directives on Electricity and Gas, legal protection of energy consumers is provided in an indirect way according to the "letter" of the law and certainly agreed with the rationale of the secondary European law to be general and abstract. The Preamble of the **Directive 96/92/EC gave the possibility to** Member States, because of their structural differences, to have different systems for regulating the electricity sector.¹⁴⁹ In accordance with the principle of subsidiarity, each Member State had the responsibility and possibility to choose the regime which corresponded best to its particular situation.

Moreover, Member States should ensure that all the parties negotiated in good faith and that none of them abused its negotiating position by preventing the successful outcome of negotiations.¹⁵⁰ A competent authority, which had to be independent, might be

¹⁴⁹ See the Preamble of the Directive 96/92/EC, par(10)

¹⁵⁰ O.p.c, Art.20(2)

designated to settle disputes relating to the contracts and negotiations in question. In particular, the European Lawmaker cited the obligation to that competent authority to settle disputes concerning contracts, negotiations and refusal of access or refusal to purchase.

Gas Directive 98/30/EC referred that Member States should ensure that all the parties negotiated access to the system in good faith and that none of them abused its negotiating position to prevent the successful outcome of such negotiations¹⁵¹ and it provided, as the Electricity Directive, the idea of designating an independent and competent authority to settle expeditiously disputes relating to the negotiations in question.¹⁵² The competent authority had the obligation to present its conclusions without delay or if possible within 12 weeks of the introduction of the dispute.¹⁵³

The second generation of Directives in Electricity and Natural Gas provided, as the first generation directives, legal protection to the energy consumers. To be more specific, the Preamble of **the Electricity Directive 2003/54/EC** proposed all Member States to take the necessary measures to protect vulnerable customers.¹⁵⁴ Such measures could differ according to the particular circumstances that might exist in Member States and might include specific measures relating to the payment of electricity bills, or more general measures taken in the social security system.¹⁵⁵ When there was an obligation to provide the consumer with financial compensation, or other forms of compensation a Member State had to grant for the fulfilment of the obligations¹⁵⁶, that should be done in a non-discriminatory and transparent way.

Gas Directive 2003/55/EC had the same rationale with Electricity Directive and it provided the obligation to Member States to dispute settlement mechanisms.¹⁵⁷

¹⁵¹ Directive 98/30/EC, Art.20(1)

¹⁵² O.p.c, Art.20 (2).In particular, this authority had to settle disputes concerning negotiations and refusal of access within the scope of this Directive.

¹⁵³ Directive 98/30/EC, Art.20(3)

¹⁵⁴ See Preamble of the Directive 2003/54/EC, par.24

¹⁵⁵ O.p.c

¹⁵⁶ See Directive 2003/54/EC, Art.3 (4) in conjunction with paragraphs 2 and 3

¹⁵⁷ Gas Directive 2003/55/EC, Art.3 (3)

The **third legislative package** was created to correct some imperfections and distortions of the electricity market and to provide more and clearer protection to the energy consumers. Precisely, **Directive 2009/72/EC** referred that ‘*non-discriminatory network access and an equally effective level of regulatory supervision in each Member State do not yet exist*’¹⁵⁸.

The Preamble of the Directive 2009/72/EC gave the clearly aspiration of the European Lawmaker to provide extra legal protection to energy consumers and for that reason it referred that ‘*Greater consumer protection is guaranteed by the availability of effective means of dispute settlement for all consumers. Member States should introduce speedy and effective complaint handling procedures*’¹⁵⁹.

Member States shall ensure that Consumers are provided with information concerning their rights as regards the means of dispute settlement available to them in the event of a dispute.¹⁶⁰ Moreover ‘*Member States shall ensure the provision of single points of contact to provide consumers with all necessary information concerning their rights, current legislation and the means of dispute settlement available to them in the event of a dispute*’¹⁶¹ and in order to manage this Member States must establish an Energy Ombudsman for the out-of-court dispute settlements.¹⁶²

Summarizing, **the Directive 2009/72/EC** aimed to achieve a high level of protection for energy consumers, especially for the issue of transparency of contractual terms and conditions, general information and dispute resolution mechanisms. Moreover, **it expanded and strengthened the proposed protective measures in relation to the former regime.**

¹⁵⁸ See Preamble of the Directive 2009/72/EC par.(4)

¹⁵⁹ See Preamble of the Directive 2009/72/EC par.(54)

¹⁶⁰ See Directive 2009/72, Art.3 (9c)

¹⁶¹ O.p.c, Art.3 (12)

¹⁶² O.p.c,Art 3 (13)

5.2 Legal protection afforded to the Energy Consumers through Greek legislation

The Greek Law 4001/2011 came to give **an optimistic note** to the Energy Consumers because it enriched their rights by creating a quite significant legal basis for their protection. The Greek Lawmaker provided Consumers' protection not by a general and abstract manner but with specific articles. He provided the Greek Regulatory Authority (RAE) the responsibility to supervise the measures that concerned the protection of Energy Consumers.¹⁶³

Moreover, **RAE** investigates Energy Consumers' complaints and it has the power to impose **administrative sanctions** on offenders, in accordance with the provisions of Article 36 of this law.¹⁶⁴ Suppliers of electricity and natural gas are required to provide information to Consumers on the potential of complaints and extrajudicial settlement procedures in case of disputes.¹⁶⁵

The spirit and the "letter" of the Law imposes to the Suppliers and Customers to make every effort to settle amicably any dispute or disagreement arising as interpretation, validity as far as the compliance terms of the supply contract and to respect the relevant provisions of the Greek Supply Code of Electricity and Gas.¹⁶⁶

Furthermore, Administrative sanctions can be imposed by RAE on owners and managers of System, Electricity grid and gas companies issued after having heard the two parties and the fine amounts to 10% of annual turnover. RAE is also responsible for arbitration in case that the difference between customer and supplier is not resolved by consensus.¹⁶⁷

The Greek Electricity Code is also provides the settlement of disputes between Energy Consumers and Suppliers by the Greek Consumer Ombudsman.¹⁶⁸ The Consumer

¹⁶³ See, Greek Law 4001/2011, Art.24(1)

¹⁶⁴ O.p.c, Art.24(2)

¹⁶⁵ O.p.c, Art.48(1d)

¹⁶⁶ See, Art.50(1) and Greek Supply Code Art.34(2)

¹⁶⁷ Greek Supply Code Art.34(3)

¹⁶⁸ See, Art.34(2) of the Greek Supply Code about the dispute resolution

Ombudsman is an independent authority set up by Law 3297/2004 and it is regulated by the Ministry of Development.¹⁶⁹ It is an extrajudicial body that provides consensual resolution of consumer disputes, but also as an advisory institution on the side of the state to treat problems within its competence.

This Authority also supervises the Amicable Settlement Committees that are established in local prefectures in the Country and they could avail citizens-consumers for the amicable settlement of disputes with suppliers.

Meanwhile, the Consumer Ombudsman has gained the ability to review the conclusions of Amicable Settlement Committees, ensuring unity of the decisions of these regional institutions and the uniform application of substantive and procedural law. The New organizational structure of local government in Greece (Schedule "Kallikrates") delegated recommendation of these Committees as well as keeping records of their findings in the Municipalities of Greece.¹⁷⁰

On the other side, Greek Public Power Corporation has the obligation to compensate its customers in the event of damage to an electrical appliance caused by unannounced power interruption or fluctuations in the supply voltage. The Public Power Corporation (PPC) is one of the largest companies in Greece and it represents about 62% of the total turnover of the electricity in the country.¹⁷¹ Since 2001, PPC exists as a Societe Anonym company and is listed on the Athens Stock Exchange and London Stock Exchange.

However, the legal disputes between Public Power Corporation and its customers seem to be like a crossword puzzle. The difficulty of the courts, where often consumers avail to claim compensation from PPC, is to identify the perpetrators of the damage, specifically if the responsible is PPC and its services or if the fault is on the side of consumers, because of not taking the analogous measures of protection, for example an installation of systems that eliminate the risk of damage to electrical appliances in case

¹⁶⁹ See the Official Website of Greek Consumer Ombudsman

¹⁷⁰ Article 94(2) of Law 3852/2010

¹⁷¹ Official website of Wikipedia

of a sudden power interruption or sudden swings in voltage. There are not few cases, however, where the courts award compensation commensurate with the loss, while PPC often accepts the burden of paying the money without exhausting all legal remedies. However, PPC is not necessarily negative to compensate consumers who suffered losses due to a failure of the electricity grid, but it must be convinced for its fault.

According to the instructions that PPC provides to its customers from its website, in case of loss of electrical devices from power outage, they should contact the local office of PPC which served their property by submitting an application. Within 10 days, if it is not required fieldwork to the property of the consumer, within 15 days, if necessary, the PPC is obliged to respond. In the case that it is determined that the damage to electrical appliances caused actually by acts or omissions of PPC's employees or services and not due to natural phenomena, accidental damage, tampering, or other unforeseen causes, then it is very likely for PPC to pay compensation to the aggrieved consumer.

Compensation from PPC to consumers rises up to 500 Euros in case of a damage of their electrical devices from power interruptions instead of having to go to court with uncertain outcome.¹⁷² In order to receive compensation from PPC, the consumer should go through the following stages: Declare the fault within four days and to submit an application, to call an electrician to correlate the damage with technical findings and data. PPC has at its disposal 15 days to decide on applications for consumers and one month margin to give compensation if it accepts fault for the damage. Finally, the consumer signs a declaration stating clearly and unequivocally that the damage was of failure of the PPC network and is fully satisfied by the compensation.

¹⁷² Newspaper Article "The News", G. Fintikakis "Compensation for damage from power interruptions", March 12, 2011

5.3 The Legal Framework of the Energy Consumers' Protection in Germany, United Kingdom, Italy, Spain and France

Every European Country has the obligation to transpose the European Directives into their internal legislative framework but the way they manage these general rules and specialize them in internal legislation differs.

Let's take the example of **Germany**. According to Cameron, Germany, in recent years, has been the only European Union Member State that “chose to rely on market mechanisms to quickly open up the domestic electricity and gas markets rather than establishing a regulatory agency to achieve this”.¹⁷³

Germany facilitated a complete liberalization of the electricity market in 1998 through the German Industry Act (Energiewirtschaftsgesetz- EnWG)¹⁷⁴ and did not give a lot of responsibilities to government regulation. Substantially, the Directive 96/92/EC and the Energy Industry Act were the main causes of this liberalization.

Grid Operators are obliged to provide Universal Service to Consumers through the Universal Supplier (Grundversorger). The company which supplies most of the household Customers is essentially the Universal Supplier. If the Universal Supplier changes the supply contract between the Customer and the Supplier remains the same.

The prices that pay the German Energy Consumers are down through ordinances by the Federal Ministry of Economics.¹⁷⁵

The German Electricity market consists through three grid levels. The first level consists of large –scale power generation companies which generate 85% of German electricity.¹⁷⁶ The second level of supply is held through medium-scale companies and the third one through local municipal utilities.

¹⁷³ *P.D, Cameron, Legal Aspects of EU Energy Regulation, 2005, p.145*

¹⁷⁴ *O.p.c, Federal Law Gazette 1998I, p.730 as amended on 25 November 2003*

¹⁷⁵ *P.D, Cameron, Legal Aspects of EU Energy Regulation, 2005, p.151*

¹⁷⁶ *O.p.c*

The statement of the head of the Federal Cartel Office, in January 2005, was very interesting and it shows how he faces the creation of prices which affect the German Consumers: ¹⁷⁷‘He did not accept that cost increases justified price hikes; wage and capital costs had not increased and the lion’s share of fuel was procured from German domestic sources. The largest companies had rationalised, making cost savings running into billions of Euros. “There are virtually no companies practising an aggressive price policy or even trying to penetrate the market. “It almost looks as though competitive forays into the so-called home markets of other incumbents are consciously avoided. That has the same effect that demarcation arrangements had during the times when such agreements were allowed.”

It should be noted that in Germany, the Federal Ministry of Economics and Technology (Bundesministerium für Wirtschaft und Technologie), is responsible for energy issues. ¹⁷⁸

According to M.Roggenkamp¹⁷⁹ unlike the constitutions of other Member States of the EU¹⁸⁰, the German Constitution does not contain any specific reference to the energy sector and in view of the environment related aspects of the energy sector.

Energy in Germany is regarded as an “absolute common good”.¹⁸¹ The German State involves in the energy sector and it is responsible for the fundamental rights of the Consumers’ for cheap and safe energy supply. While “supply in Germany constitutes a private activity, the public behaviour is limited by the legislative powers to the State but also by the necessary observance of human rights”.¹⁸²

¹⁷⁷ Power in Europe, 31 January, 2005, p 1-2.

¹⁷⁸ See, <http://www.bmelv.de>

¹⁷⁹ See *M. M. Roggenkamp, C. Redwell, A. Ronne, Inigo Del Guayo*, “Energy Law in Europe”, 2007, p.630

¹⁸⁰ See, e.g. Art.17 (6,7) of the Greek Constitution, Art.43 of the Italian Constitution, Preamble of the French Constitution

¹⁸¹ See judgment of the Federal Constitutional Court in : BVerfGE vol 30, p.292, 323-4

¹⁸² See *M. M. Roggenkamp, C. Redwell, A. Ronne, Inigo Del Guayo*, “Energy Law in Europe”, 2007, p.632

In United Kingdom, the electricity industry is characterized by an absence of State at control, ownership and involvement (except as a Regulator) which is dangerous for security of supply within the country. The Gas and Electricity Market Authority is the Regulator of the electricity market in Great Britain and it operates through its office, the Office of Gas and Electricity Market, which is independent of the government.

The General Director of Gas and Electricity Market, which is the Regulator, is independent of the government and is an economic regulator involved in tariffing and pricing decisions and competition issues. In terms of the legislation, ‘‘regulatory powers are given to the individual office and the Director is guaranteed security of tenure for a fixed period of five years.’’¹⁸³

The Office of Fair Trading is responsible for the protection of general consumers’ interests and it is involved about consumers’ complaints about some companies.

As it is widely accepted that UK was a pioneer of energy liberalization particularly in gas but from the other side, it is surprising that the UK does not have specific Public Service Obligations.¹⁸⁴ The Supplier of Last Resort obligations may have difficulties when he anticipates economic problems and he must allow the Regulator to compel another Supplier who must take the license ‘‘without prejudice to existing customers’’.¹⁸⁵

The Customers of possible merging utilities are likely to have ‘‘essential topping’’ and as a result the growth potential may have limits. The non-monopoly activities of electricity generation and supply are not subject to controls so through this freedom to set prices is subject to a variety of Consumer Protection Obligations imposed on the licenses.¹⁸⁶

Furthermore, there is no single set of Public Service Obligations, but there are license provisions which act as essential service providers.¹⁸⁷ **The Office of Gas and Electricity Markets (Ofgem) is responsible for the protection of the energy**

¹⁸³ See *M. M. Roggenkamp, C. Redwell, A. Ronne, Inigo Del Guayo*, ‘‘Energy Law in Europe’’, 2007, p.1179

¹⁸⁴ O.p.c, p.1228-1229

¹⁸⁵ O.p.c, p.1238

¹⁸⁶ *P. D. Cameron*, ‘‘Legal Aspects of EU Energy Regulation’’, 2005, p.355

¹⁸⁷ O.p.c, p.363

Consumers in UK and especially for those that are disabled, sick, elderly, for those who have low income and live in rural areas.¹⁸⁸

The Supply licenses impose duties on Suppliers with respect to the protection of **Vulnerable Customers**. ‘‘In this category are included these who are blind, deaf, of pensionable age, disabled or chronically sick.’’¹⁸⁹ Suppliers have also the obligation to provide Consumers with contracts that are transparent and clear. Domestic Supplier are obliged to publish Codes of Practice to Customers for difficulties in payment bills and they also have to inform about energy efficiency and they must give an extra and special help to the disabled, chronically sick and to the elderly.

A very significant measure for the consumers’ protection in the UK is the right to change the standard license conditions.¹⁹⁰

The Supplier of Last Resort exists in accordance with the supply licenses. ‘‘ The Office of Gas and Electricity Markets can arrange for a new Supplier to take over responsibilities for customers of the failed Supplier’’.¹⁹¹ It should be noted that there is no concept of reasonable prices and as such **Customers are not protected from price increases**.

The Utilities Act established the Gas and Electricity Consumer Council, known as Energywatch; it is responsible for Consumers’ issues¹⁹² and for resolving their complaints as far as to act as an Informative Body about the Consumers’ rights.

‘‘A peculiar system is that of the United Kingdom, where ‘‘Consumer Watchdogs’’ have been established in all regulated sectors in order to ‘‘keep a balance between competition and consumer protection’’.¹⁹³ ‘‘In the UK system, Consumer Focus (the statutory consumer body), rather than the NRA (Ofgem), is in charge of comparing commercial offers in the energy sector.’’¹⁹⁴ Consumer Focus provides a voluntary Code of Practice with an accreditation scheme, ‘‘The Confidence Code’’, which covers inde-

¹⁸⁸ O.p.c, p.364

¹⁸⁹ P. D. Cameron, ‘Legal Aspects of EU Energy Regulation’, 2005, p.364

¹⁹⁰ See Gas Act 1984 and Electricity Act 1989; OFGEM has right to enforce them from 2002. OFGEM *protecting customers: Ofgem’s enforcement powers*.

¹⁹¹ O.p.c, p.364-365

¹⁹² O.p.c, p.368

¹⁹³ L.A. Reisch and H-W. Micklitz ‘‘Consumers and deregulation of the electricity market in Germany’’, *Journal of Consumer Policy*, 29 (2006), p. 399–415

¹⁹⁴ See, <http://www.ofgem.gov.uk/Consumers/Pages/Consumer.aspx>

pendent internet price comparison services, setting out the minimum requirements that they must meet in order to be, and remain, accredited.¹⁹⁵

According to Marija Bartl ‘‘ The success of Energywatch was a Supercomplaint to the OFGEM on the billing procedure, which resulted in the call of the OFGEM to the companies in the energy sector to establish an Energy Supply Ombudsman who would investigate the billing disputes and eventually award also financial compensation.’’¹⁹⁶

Moreover, Consumer Focus webpage contains itself an Energy Price Comparison Tool¹⁹⁷, as well as links to the accredited online price comparison services operating in the market as to facilitate consumers’ switching. Finally in UK, the ‘fuel poverty’ is defined by the household expenditure of more than 10% on energy.¹⁹⁸

Italy started the energy liberalization in 1999 with the Legislative Decree known as ‘‘ Decreto Bersani’’¹⁹⁹ which had transposed the Directive 96/92/EC.

All Customers in Italy became **Eligible** from 1 July 2007 and they were free to choose their Supplier. From 1 July 2004, all non-household Customers became Eligible.²⁰⁰ **Low tariffs are imposed to families with economical problems** .While all Customers are now eligible to choose their Gas Supplier, **the Small Consumers are protected with a price option equal to a previous lower tariff.**

Article 14 of the Legislative Decree 79/1999 set criteria about eligible and non eligible consumers for the Electricity market. On the other hand, Gas market is completely open so all household and non-household customers are eligible.

¹⁹⁵ <http://www.consumerfocus.org.uk/files/2010/12/New-Confidence-Code.pdf>

¹⁹⁶ see, Eric Stein Working Paper No 3/2009 ,THE AFFORDABILITY OF ENERGY SUPPLY
Marija Bartl, p.12

¹⁹⁷ <http://energyapps.consumerfocus.org.uk/price/>

¹⁹⁸ See OFGEM: Sustainable Development Report, November 2007, p. 31.

¹⁹⁹ DL 79/1999

²⁰⁰ P. D. Cameron, ‘Legal Aspects of EU Energy Regulation’’, 2005, p.228

Specific Public Service Obligations are imposed for security, regularity, quality, price and environmental protection.²⁰¹ The Authority for Electricity and Gas is an independent body which regulates and supervises electricity and gas market and it is also responsible for the protection of energy Consumers.

Furthermore, in Italy, ‘the NRA (Aeeg) directly runs and finances a price comparison service, the “TrovaOfferte” (offer-finder) which consists in a web application, which displays a list of offers available to a given consumer, on the basis of the characteristics and preferences that emerge from some indicators provided by the user’.²⁰²

The Italian Association for Consumer Protection and Environment is a consumer organization with 283 information centers throughout Italy and offers advice on consumers for a lot of issues and as energy issues.²⁰³

The Italian Ministry of Economic Development is responsible for consumer policies whose main task is to assure consumer protection in the fields of competition and market.²⁰⁴ Moreover, **Italian Regulatory Authority** is playing a **leading role** in the **consumer’s protection** and information and ‘ as a consequence, since 2007, **more than 8 millions of Italian consumers** has changed Energy Trader.²⁰⁵

In **France**, the Law No. 2000-108 concerned the ‘ modernization and development of electricity Public Service.²⁰⁶

Eligible Consumers in France are all **professional Consumers** except for the private households. The tariffs for the distribution of electricity by Consumer Clients are fixed

²⁰¹ See P. D. Cameron, ‘Legal Aspects of EU Energy Regulation’, 2005, p.242

²⁰² <http://trovaofferte.autorita.energia.it/trovaofferte/TKStart.do>

²⁰³ <http://www.ukecc-services.net/ItalianAssociationConsumerProtectionEnvironment.cfm>

²⁰⁴ http://ec.europa.eu/consumers/overview/country_profile/IT_web_country_profile.pdf

²⁰⁵ Consumer protection in Europe, The role of the Distributor: Enel’s pilot projects Carlo Bozzoli, Head of the Network Commercial Services Department Enel Distribuzione, Italy Florence, 16 February 2012

²⁰⁶ See P. D. Cameron, ‘Legal Aspects of EU Energy Regulation’, 2005, p.126

by ministerial decree. The tariffs, in order to be created, must be based on public and non-discriminatory criteria. There is also a system of “ Contributions to the Electricity Public Services and it is owed by the end0Consumers either he is eligible or not.”²⁰⁷

On July 2004 it was held the fully opening of the market for the supply of electricity to all clients apart from private households.²⁰⁸ **The Public Service Obligations is very important in France as compared to other European Countries.** In France, the Universal Service is accepted by “everyone and it is argued that everybody must be supplied with electricity, even the poorest and the most isolated”.²⁰⁹

French Law has provisions to guarantee justice, equity and fairness for Consumers. For example the law for the natural gas guarantees the supply of it in favour of persons that are in a difficult and insecure situation.²¹⁰

“The Retail energy market in France is fully opened to competition from 1 July 2007. “The price of energy is set by a Minister of Economy and Energy and should reflect the costs and appropriate profits of the supplier”.²¹¹ “The French national report to the ERGEG for the year 2006 highlights that it was necessary to adopt additional measures to protect Affordability of Energy Supply for the consumers in precarious situations in order to ensure the Affordability of Energy for all groups of consumers.”²¹² It started in 2001 by setting up a system “to preserve or guarantee access to electricity” for people in precarious situations²¹³ and in payment difficulties.²¹⁴

“For vulnerable consumers, the price regulation is insufficient as they clearly need better tailored measures than few percent lower prices than the open market price. Rather, the price regulation in France benefits foremost the non-vulnerable consumers”.²¹⁵

²⁰⁷ O.p.c, p.130

²⁰⁸ O.p.c, p.131

²⁰⁹ O.p.c, p.137

²¹⁰ P. D. Cameron, 'Legal Aspects of EU Energy Regulation', 2005, p.138

²¹¹ see, Eric Stein Working Paper No 3/2009 ,THE AFFORDABILITY OF ENERGY SUPPLY Marija Bartl, p.6

²¹² see, Eric Stein Working Paper No 3/2009 ,THE AFFORDABILITY OF ENERGY SUPPLY Marija Bartl, p.7

²¹³ Decree 2001-531 ,20 June 2001

²¹⁴ Decree 2005-971 ,10 August 2005

²¹⁵ see, Eric Stein ,Working Paper No 3/2009 ,THE AFFORDABILITY OF ENERGY SUPPLY Marija Bartl, p8

In Spain, the full opening of the electricity market for household Consumers was held in January 2003. The Spanish Regulator reported²¹⁶ that: ‘Low voltage Consumers who had access to the market for the very first time last year (2003) have actually joined it at a rather slow rate.’ At 2003, only 110,000 household Consumers had begun the process of switching out of nearly 23 million consumers.²¹⁷ The gas retail market in Spain opened in 2003, but annual switching rates for small Consumers are only 5%.²¹⁸

First of January 2008 was the date that all kind of Consumers were supplied with electricity freely. Before the latter day there were a lot of tariffs that were imposed to Consumers.

At September 1998, a Protocol that was agreed between the Minister for Industry and Electricity and electricity Companies, gave the opportunity to qualified Consumers to choose freely their Supplier.²¹⁹

At 2005, a new era in electricity started with the existence of the **White Book on the reform of the regulatory framework of electricity generation in Spain**,²²⁰ and it was **something like a gift to the Spain electricity Consumers** because it lowered the electricity prices paid by them, and these new electricity prices had been lower than the average price paid by consumers in other countries.

The Spanish legislator, under Recital 13 and Article 3.2 of the first Electricity Directive, imposed public-service obligations.²²¹

Energy Consumer Protection Act, at 2010, specified the terms about the contracts between Consumers and Suppliers. It determined the Information required in a contract²²² Article 12 (2) about **Consumer acknowledgments and signatures** referred

²¹⁶ http://www.cne.es/pdf/PA004_04ingles.pdf

²¹⁷ *Steve Thomas*, *The European Union Gas and Electricity Directives*, September 2005, p.98

²¹⁸ *O.p.c*, p.98

²¹⁹ See *M. M. Roggenkamp, C. Redwell, A. Ronne, Inigo Del Guayo*, ‘Energy Law in Europe’, 2007, p.1131

²²⁰ *O.p.c*, p.1147

²²¹ *P. D. Cameron*, ‘Legal Aspects of EU Energy Regulation’, 2005, p.329

²²² See *Energy Consumer Protection Act*, 2010, S.O. 2010, CHAPTER 8, Art.12 (1,2)

that ‘‘ If a supplier enters into a contract with a consumer, the supplier shall ensure that the consumer provides such acknowledgments and signatures as may be prescribed, in such form or manner as may be prescribed, and respecting such information or matters as may be prescribed’’.²²³ Moreover the contract must be detailed and accompanied by clear information or requirements or obligations of the two sides.

Studying the **legal framework for the protection of the rights of energy consumers**, it is sure that, **UK sets an important precedent for Europe**. It has understood that the inexpensive objective dispute resolution mechanism is absolutely crucial for ‘‘disciplining’’ the energy suppliers.²²⁴ According to the consumer protection bodies and organizations, the ‘Fuel Direct’, together with prepayment meters, is one of the most valuable possibilities for the vulnerable Consumers for ensuring timely payment and avoiding disconnection for debt.²²⁵

Due to the opening of electricity and gas markets for all European countries from 1 July 2007, ERGEG²²⁶ carried out a survey for good practices in terms of pre-contractual customer information. This survey showed the exactly above information²²⁷ :

In the United-Kingdom, ‘‘a registered charity that provides help and advice to people aged 60 and over (Age Concern) publishes specific fact sheets aimed at those over 60 and provides helpful advice about energy efficiency and saving money on energy bills. It also provides a number of contact details for other organisations that can provide advice on switching supplier, such as Energywatch (UK’s consumer ombudsman).’’²²⁸

²²³ O.p.c, Art 12 (2)

²²⁴ see, Eric Stein Working Paper No 3/2009 ,THE AFFORDABILITY OF ENERGY SUPPLY Marija Bartl, p.17

²²⁵ See OFGEM Vulnerable Customers & Codes Workgroup – Final Report, June 2006, p41, 42.

²²⁶ The **European Regulators’ Group for Electricity and Gas (ERGEG)** is an advisory group to the European Commission on internal energy market issues in Europe. ERGEG was set up by the European Commission to assist the Commission in consolidating a single EU market for electricity and gas. ERGEG’s members are the heads of the national energy regulatory authorities in the EU’s 27 Member States.

²²⁷ See, Customer Information Handbook, A review of good practices, Ref: E06-CPR-04-03, 6 December 2006

²²⁸ See, Customer Information Handbook, A review of good practices, Ref: E06-CPR-04-03, 6 December 2006,p.14

In Spain, ‘‘the CNE together with the Ministry of Industry, launched in 2003 an advertising campaign on TV, radio, press and billboards in order to inform consumers about their options regarding the energy supply.’’²²⁹

In Italy, ‘‘a notice describes in plain language consumers rights and suppliers’ obligations defined in the gas commercial code of conduct issued by the regulatory agency, AEEG. The notice covers rules on salespersons’ behaviour, mandatory information and documents that must be provided to the customers before the subscription of a new contract, transparency of price and supply conditions and cooling-off periods. A final check list helps the customer to verify the correctness of the suppliers’ marketing activity. Suppliers must provide a copy of this notice to potential customers when offering a free market supply contract together with a copy of the proposed contract and other information material.’’²³⁰

²²⁹ See, Customer Information Handbook, A review of good practices, Ref: E06-CPR-04-03, 6 December 2006,p.17

²³⁰ O.p.c, p.18

EPILOGUE -CONCLUSIONS

On 21 June 2012, the Council of European Energy Regulators (CEER) made a conference to build a vision for Europe’s energy customers.²³¹ Ms Rossella Delfino (from Commissioner Dalli’s cabinet) underlined that ‘‘the importance of energy for consumers is highlighted in the European Commission’s new proposal for a ‘‘European Consumer Agenda’’, adopted in May 2012’’.²³²

From the study through the analysis of the legal framework of European Countries on the Energy Consumer Protection Notice, it is observed that European Countries have incorporated in their legal framework measures for the protection of European Energy Consumers. Nevertheless, there are observed and redressed Consumer appeals to proportionate relevant authorities.

For example, in 2011, **the reports** that were submitted **to the Greek Consumer Ombudsman** concerned differences arising between consumers and the Greek Power Company, Public Power Corporation (PPC), divided into most consistently shaped categories²³³:

i) The first category concerned household equipment damages by disturbances in the service of electricity ii) the second category concerned missing or incorrect counting of quarterly consumption, due to problems in the electricity meter (stagnation Recording reverse day and night duty) iii) the third category had to do with the recording unusually high power consumption iv) and the fourth category concerned defaults (repayment) accounts.

The reports of damage from electricity disturbances relate primarily to periodically strike of employees of company PPC, after the sudden interruption and re-connected

²³¹ See Conference of the Council of European Energy Regulators (CEER), Building a 2020 Vision for Europe’s energy customers, 21 June 2012, p.9

²³² O.p.c, p.9

²³³ Conference of the Council of European Energy Regulators (CEER), Building a 2020 Vision for Europe’s energy customers, 21 June 2012, p.93

electricity causally to disrupt the trend. The Authority of the Greek **Consumer Ombudsman**, under investigation of reports, has requested information from the company and the competent authorities regarding compliance with the provisions of existing laws and judgments about the adequacy of supply, and the correct information for consumer for power interruptions.

On the growing category of consumer complaints regarding the inability to pay their bills, the Greek Consumer Ombudsman has issued recommendations in accordance with which the power interruption, even in cases already existed legal arrears, it must be an extreme measure of recovery and applied only after failing to pay unsettled debts.²³⁴

It must be also referred **that the European Commission declared illegal the power interruptions that may happen in Greece**. Energy Commissioner, G.Etigker, clarified that the blackout by PPC for non-payment of a special fee estate infringed to EU directive and he added that PPC has no right to interrupt electricity to any citizen who does not pay the fee, but normally pays the energy bill.²³⁵

European Parliament often entrusts surveys of public opinion of citizens of the European Countries in an attempt to better understanding their perceptions and expectations. **The Euro barometer** survey was conducted on behalf **of the European Parliament for specific energy issues**, as a continuation of a previous research published in January 2011 ahead of the European Council of 4 February²³⁶. The sample for the survey was carried out by TNS Opinion between 9 February and 6 March 2011, at a difficult time because of cold winter and rising prices of all raw materials.

²³⁴ O.p.c, p.93

²³⁵ Greek Newspaper ‘‘The News’’, Article, ‘‘Criticisms for the special fee of PPC from the European Commission and Ombudsman’’, 25 November 2011

²³⁶ Euro barometer survey conducted on behalf of the European Parliament for specific energy issues, 9 February and 6 March 2011, (Standard EB 74.3), <http://www.europarl.europa.eu/aboutparliament/el/00191b53ff>

The survey ‘showed clearly’ that European Energy Consumers (the respondents) prioritized practical measures to reduce their energy bill. They answered that they would like to i) be able to measure daily energy consumption using "smart" meters ii) favor of creating competition between energy providers and they finally called for greater transparency and simplification of energy bills.²³⁷

As it can be easily concluded, the German Energy Sector has great economic importance within the European Union not only because its' energy consumption, which is at the fifth largest in EU, but also because it's an important energy transit country.

Moreover, Germany had made desperate efforts, as noted in the EU document, with trying to build a coalition to ensure that it will not be imposed the complete unbundling, so the EU ministers had adopted an alternative way, whereby the former state monopolies such as E.ON and RWE in Germany, can retain ownership of transmission networks for electricity and natural gas, provided that they are subject to external supervision.

In Italy, the production activities, imports, exports, and supply to suitable customers are free over the Italian territory, but ‘the obligations such as public service is complied with the EU Regulations.

In Spain, the Constitution changed the traditional expression of ‘public service’ with the expression ‘reserved essential service. In 1986, Spain had entered into the European Union and from then ‘the idea of public service’ was changed into ‘the idea of economic interest’.

In United Kingdom, it is widely known, that there is no written Constitution. Great Britain, Northern Ireland has their own separate legal systems, but the legal differences are minimal.

²³⁷ See, Euro barometer survey conducted on behalf of the European Parliament for specific energy issues, 9 February and 6 March 2011, (Standard EB 74.3), <http://www.europarl.europa.eu/aboutparliament/el/00191b53ff>

The survey of the Secondary Law in Europe through Directives revealed that there is **no provision for supplier of last resort to the legislative framework of natural gas market**, in contrast with electricity and here it is **observed lack of sufficiency of legal protection** to the energy consumers. On the other side, the difference between gas and electricity justifies the absence of universal service because except from gas it can be used a different primary source of energy such as oil but the dependence on electricity is more trenchant than this on gas. Moreover, one of the weak points that were revealed during the research for writing this Master Thesis is the **fact that literature does not indicate comparative way of protection of energy consumers**.

As a conclusion from all the above mentioned, it could be said that there is **an obvious effort by European Countries and Institutions of the European Union to protect the rights of Energy Consumers** but **Energy**, other than a social good, is equally an economic good so it is often **economically exploited** by the Partners that generate electricity and that may affect the rights of consumers. So it would be good for the sake of Consumers to cooperate with Regulatory Authorities and with Consumer protection Organizations because **‘only strength can cooperate. Failure can only beg’**.

So if someone would like to answer the question if there **is sufficient protection for the Energy Consumers**, she may reply that European Consumers are not always effective redress when their rights are violated. This is because they find court proceedings costly, lengthy and complicated. Ineffective processes and uncertain outcomes discouraged consumers from even trying to seek redress. In addition, consumers do not always know the exact content of their rights and, therefore, do not seek compensation when they are entitled. The uncertainty in obtaining redress undermines consumer confidence and prevents them from exploit the opportunities offered by the single energy market. Energy Regulatory Authorities of European Countries and Energy Consumers’ Ombudsman can help considerably by providing information support consumer of energy in order to lead them into staunch defense of the interests and rights.

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