

KLUWER LAW INTERNATIONAL

# ENERGY LAW IN FINLAND

KIM TALUS  
ALICE GUIMARAES-PUROKOSKI  
ARTO RAJALA  
LAURA HUOMO  
PETRI VESA  
TUIJA KAIJALAINEN &  
LEE A SALMINEN



Wolters Kluwer

Law & Business

KLUWER LAW INTERNATIONAL

# Energy Law in Finland

**Kim Talus**  
**Alice Guimaraes-Purokoski**  
**Arto Rajala**  
**Laura Huomo**  
**Petri Vesa**  
**Tuija Kaijalainen &**  
**Leea Salminen**

This book was originally published as a monograph in the International  
Encyclopaedia of Law/Energy Law.

General Editor: **Roger Blanpain**  
Associate General Editor: **Michele Colucci**  
Volume Editors: **Kurt Dekelehere, Bram Delvaux**



Law & Business

AUSTIN BOSTON CHICAGO NEW YORK THE NETHERLANDS

*Published by:*  
Kluwer Law International  
PO Box 316  
2400 AH Alphen aan den Rijn  
The Netherlands  
Website: [www.kluwerlaw.com](http://www.kluwerlaw.com)

*Sold and distributed in North, Central and South America by:*  
Aspen Publishers, Inc.  
7201 McKinney Circle  
Frederick, MD 21704  
United States of America  
Email: [customer.service@aspenpublishers.com](mailto:customer.service@aspenpublishers.com)

*Sold and distributed in all other countries by:*  
Turpin Distribution Services Ltd.  
Stratton Business Park  
Pegasus Drive, Biggleswade  
Bedfordshire SG18 8TQ  
United Kingdom  
Email: [kluwerlaw@turpin-distribution.com](mailto:kluwerlaw@turpin-distribution.com)

DISCLAIMER: The material in this volume is in the nature of general comment only. It is not offered as advice on any particular matter and should not be taken as such. The editor and the contributing authors expressly disclaim all liability to any person with regard to anything done or omitted to be done, and with respect to the consequences of anything done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this volume. No reader should act or refrain from acting on the basis of any matter contained in this volume without first obtaining professional advice regarding the particular facts and circumstances at issue. Any and all opinions expressed herein are those of the particular author and are not necessarily those of the editor or publisher of this volume.

*Printed on acid-free paper.*

ISBN 978-90-411-3324-3

© 2010 Kluwer Law International BV, The Netherlands

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without written permission from the publisher.

Permission to use this content must be obtained from the copyright owner. Please apply to: Permissions Department, Wolters Kluwer Legal, 76 Ninth Avenue, 7th Floor, New York, NY 10011-5201, USA. Email: [permissions@kluwerlaw.com](mailto:permissions@kluwerlaw.com)

Printed and bound in Great Britain by  
CPI Antony Rowe, Chippenham and Eastbourne

## The Authors



Kim Talus is a Lecturer in International Energy and Resources Law at the UCL School of Energy and Resources, Australia (UCL SERAus). Prior to joining UCL SERAus, Mr Talus worked as a researcher at the Institute of International Economic Law (University of Helsinki) where his research focused on European Union (EU) energy law. He has also worked in private practice and at the Finnish Ministry for Foreign Affairs. Mr Talus is a member of various professional and academic bodies, including the International Bar Association (IBA), AIPN, ELRF and Institute for Energy Law (IEL). He also lectures as an Adjunct Professor at the University of Houston Law Center and at the University of Helsinki. He has received several international awards for his

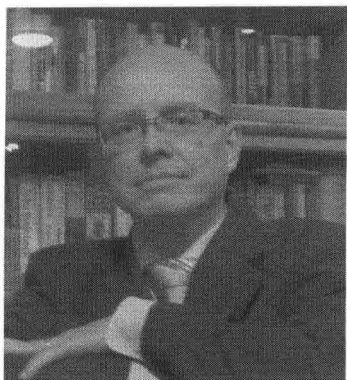
work, including the Willoughby Prize 2005 for an outstanding article published in the *Journal of Energy and Natural Resources Law* and the 2008 Scholarship Award of the International Bar Association.



Dr Alice Guimaraes-Purokoski is Director of the unit for EU litigation at the Finnish Ministry for Foreign Affairs. As a state agent before the European Court of Justice, she has represented Finland in several court cases since 2003, including cases with energy aspects. She has been nominated as judge at the Supreme Administrative Court of Finland for a fixed period exceeding at the end of August 2010. She has previously worked with energy issues at the Finnish Ministry for Trade and Industry and at the European Commission DG TREN as a national expert. Ms Guimaraes-Purokoski trained on the bench in 1996–1997 (Helsinki District Court). Her PhD thesis ex-

amined the vertical division of competence in EU law and used the development of European Community (EC) energy policy and the regulation of public service obligations as examples.

## The Authors



Arto Rajala is a Chief Counsellor in the Energy Department (Energy Market Division) of the Ministry of Employment and the Economy in Finland. He is responsible for law drafting projects in the energy market sector as well as electricity and natural gas market regulation. He has worked on energy markets since 1995 as the Chief Legal Officer and the Director of the Energy Market Authority and as a Chief Counsellor of the Ministry. Since 1996, he has participated in most of the government law drafting projects in the sectors of electricity and natural gas markets as well as in several processes for establishing EU energy market legislation. He also has experience as a

City Court Judge and as a Chairman for a division of the Consumer Complaints Board. Mr Rajala graduated from Helsinki University in 1986 (LL.M.) and trained on the bench in 1992–1993. He is currently enrolled in the Helsinki University Faculty of Law for doctoral studies in commercial law.



Laura Huomo works as a Counsel for White & Case LLP, Helsinki office. Ms Huomo has both Finnish (Helsinki University, LL.M. 1999 and LL. Lic. 2002) and US (University of Michigan, LL.M. 2001) law degrees and is a member of both the Finnish and the New York Bar Associations. Ms Huomo practiced with a Finnish law firm from April 1999 through July 2000 before joining White & Case in September 2001. Ms Huomo is currently also enrolled at the University of Helsinki Faculty of Law, where she is participating in the PhD programme and is writing her dissertation about questions related to the project financing of natural gas pipelines.

## The Authors



Petri Vesa works for Peltonen, Ruokonen & Itäinen Ltd, a Finnish law firm specializing in business law. He is an attorney-at-law and a member of the Finnish Bar Association. His practice areas include environmental law and energy law, and he acts for clients, *inter alia*, on environmental and water permits and emissions trading as well as contaminated soil cases. From 1998 to 2006, he worked as an in-house counsel for one of the leading energy companies in Finland. He graduated from Helsinki University of Technology in 1998 (M.Sc., energy and environmental technology) and from the University of Helsinki in 2000 (LL.M.).



Tuija Kaijalainen is a partner at the Finnish law firm Peltonen, Ruokonen & Itäinen. Her primary practice areas are tax law, corporate law, mergers and acquisition (M&A) and contract law. She graduated from Turku University in 1993 (LL.M.) and from Helsinki School of Economics in 1997 (B.Sc.). After training on the bench in 1994–1995, she became an associate in 1996 and has been a partner since 2005.

## The Authors



Leea Salminen is the former General Counsel of the Finnish subsidiary of the Exxon Mobil Corporation group of companies. She has extensive practical experience in the oil sector in Finland and is recognized as an expert in legal questions regarding oil in Finland. As Chairman of the Legal Committee of the Finnish Oil and Gas Federation for more than ten years, Ms Salminen has been following closely the development of European and Finnish legislation and jurisprudence in energy matters. She has LL.M. degrees from the University of Helsinki and London School of Economics. Currently, she leads the Energy Sector of Procopé & Hornborg, Attorneys at Law, in Helsinki.

# Table of Contents

The Authors	3
List of Abbreviations	15
General Introduction	17
§1. GENERAL BACKGROUND	17
§2. BASIC PRINCIPLES OF ENERGY LAW	18
§3. HISTORICAL BACKGROUND	19
I. Electricity Market Regulation	20
II. Natural Gas Market Regulation	21
§4. ROLE OF GOVERNMENT INSTITUTIONS IN THE SHAPING AND ADMINISTRATION OF ENERGY LAW AND POLICY	22
§5. SOURCES OF ENERGY LAW	25
Part I. Electricity	27
Chapter 1. General Overview of the Legal Framework for the Electricity Sector	27
§1. ELECTRICITY MARKET ACT	27
§2. LEGISLATION ON CONSTRUCTION AND OPERATION OF POWER PLANTS	29
§3. LEGISLATION ON SUPPORT MECHANISMS FOR ELECTRICITY GENERATION	29
§4. LEGISLATION ON SECURING THE ADEQUACY OF THE ELECTRICITY SYSTEM	30
Chapter 2. System Operation	31



## Table of Contents

§1. THE FINNISH ELECTRICITY SYSTEM	31
§2. NETWORK CONCESSIONS	32
I. Concessions for System Operation	32
A. Electricity System License	32
B. Electricity System License for the TSO with the Systems Responsibility	34
C. Derogation under Article 7 of Regulation (EC) No. 1228/2003	35
II. Concessions for Construction of Power Lines	36
A. Construction of High-Voltage Power Lines	36
B. Construction of a Distribution System	37
§3. GENERAL OBLIGATIONS OF SYSTEM OPERATION	38
I. Open Access to Electricity Systems	38
II. Provision of All Services by the Customer's System Operator	40
III. Wide Transparency in Electricity System Operation	42
§4. PRICING PRINCIPLES IN SYSTEM OPERATION	42
I. General Principles for Setting Tariffs for Transmission, Distribution and Connections	42
A. General	42
B. Cost Correlation and Impartiality in Pricing	43
C. Ban on Distance-related Charges	44
D. Ban on Terms Hampering the Electricity Trade	45
II. Provisions on Charges for Transmission	45
III. Provisions on Distribution Charges for Generation	46
IV. Provisions on Charges for Connection Service	46
§5. SYSTEMS OBLIGATIONS FOR THE TRANSMISSION AND DISTRIBUTION OPERATORS AND OTHER PARTIES	47
I. General	47
II. Systems Responsibility	48
III. Balance Responsibility	50
IV. Responsibility for Balance Determination and Settlement of Electricity Deliveries	50
V. Secrecy Obligation Related to Systems Obligations	51
Chapter 3. Generation	52
§1. OVERALL VIEW OF THE ELECTRICITY GENERATION MARKET	52
§2. GENERATION CAPACITY	54
§3. PEAK LOAD POWER RESERVE SYSTEM	54
§4. RENEWABLE ENERGY SOURCES	56

## Table of Contents

§5. LEGISLATION ON THE CONSTRUCTION AND OPERATION OF ELECTRICITY GENERATION PLANTS	58
I. Environmental Law	58
II. The Impact of EU Energy Law on the Choice of Fuels	59
III. EU Public Procurement Provisions Applying to Entities Operating in the Energy Services Sector	60
IV. Electricity Security	62
V. Nuclear Power	62
A. Decision-in-Principle by the Council of State	63
B. Construction License	65
C. Operating License	66
VI. Hydro Power	67
VII. Peat	71
§6. OWNERSHIP OF ELECTRICITY GENERATION PLANTS	73
Chapter 4. Trade and Supply	74
Chapter 5. Separation of Activities	77
§1. GENERAL	77
§2. UNBUNDLING IN THE TSO	77
§3. SEPARATION OF ACTIVITIES IN DISTRIBUTION SYSTEM OPERATORS	81
Chapter 6. Consumption	86
Chapter 7. Supervision and Penalties	87
Part II. Natural Gas	89
Chapter 1. Introduction	89
Chapter 2. Regulatory Basis of the Natural Gas Pipeline Industry in Finland	91
Chapter 3. Network License and the Project Permit	93
Chapter 4. Sales and Obligation to Supply	95
§1. PRICING OF NATURAL GAS	95
§2. AGREEMENT ENTERED INTO PRIOR TO THE NATURAL GAS MARKET ACT	97

**Table of Contents**

Chapter 5. Unbundling 98

Chapter 6. Transmission 99

§1. OBLIGATION TO CONNECT 101

§2. RATES FOR TRANSFER 101

Chapter 7. Development of Secondary Markets for Natural Gas in Finland 103

Chapter 8. Provisions for and Actions in a Potential Disturbance in the Natural Gas Supply 105

Chapter 9. Development of Natural Gas Markets 107

Chapter 10. Changes Made to the Act on Trading on Standardized Options and Futures to Enable the Future Secondary Trading of Electricity and Natural Gas 110

Part III. Regulatory Framework Concerning Oil and Coal 111

Chapter 1. General 111

Chapter 2. Supply Market 113

Chapter 3. Consumption and Distribution 115

Chapter 4. Quality 122

Chapter 5. Transportation 124

Chapter 6. Security of Supply 125

Chapter 7. Conclusion 127

Part IV. Interaction between Energy Law and Environmental Law 129

Chapter 1. Introduction 129

## Table of Contents

Chapter 2. Decision Making and Public Participation	131
§1. GENERAL OVERVIEW	131
§2. EIA REQUIREMENT	131
§3. EIA PROCEDURE	133
Chapter 3. Emissions Trading	135
§1. BACKGROUND	135
§2. SCOPE OF THE FINNISH ACT	136
§3. EMISSIONS PERMIT	137
§4. ALLOCATION OF ALLOWANCES	137
§5. THE USE OF FLEXIBLE MECHANISMS	140
§6. MONITORING AND VERIFICATION OF EMISSIONS	141
§7. TRANSFERRING, REGISTERING AND TRADING OF ALLOWANCES	141
Chapter 4. Environmental Protection and Waste Management	143
§1. GENERAL OVERVIEW	143
§2. GOALS AND PRINCIPLES	143
§3. REQUIREMENT FOR ENVIRONMENTAL PERMIT	144
§4. PERMIT PROCEDURE	146
§5. GENERAL PERMIT ASSESSMENT	147
§6. DECREES ON EMISSION LIMITS FOR COMBUSTION PLANTS	148
§7. CONTROL	149
Chapter 5. Land Use and Expropriation	150
§1. GENERAL OVERVIEW	150
§2. NATIONAL LAND USE OBJECTIVES	150

**Table of Contents**

§3. PLANS 151

§4. EXPROPRIATION OF LAND 152

Chapter 6. Nature Conservation 154

§1. GENERAL OVERVIEW 154

§2. NATURE CONSERVATION PLANNING 154

§3. NATURE RESERVES 155

§4. CONSERVATION OF NATURAL HABITATS AND BIOTOPES 155

§5. THE NATURA 2000 NETWORK 156

Chapter 7. Use of Water Resources 158

§1. GENERAL OVERVIEW 158

§2. REQUIREMENT FOR WATER PERMIT 159

§3. PERMIT PROCEDURE 159

§4. PERMIT ASSESSMENT 160

Chapter 8. Other Environmental Legislation 161

§1. CONTAMINATED LAND 161

§2. ENVIRONMENTAL DAMAGE LEGISLATION 161

§3. ENVIRONMENTAL CRIMINAL LIABILITY 162

§4. PROTECTION OF ARCHAEOLOGICAL AND BUILT HERITAGE 162

§5. CHEMICALS AND SAFETY 163

§6. INFORMATIVE REGULATION AND VOLUNTARY SCHEMES 163

Chapter 9. Discussion 165

Part V. Interaction between Energy Law and Tax Law 169

Chapter 1. Introduction 169

## **Table of Contents**

<b>Chapter 2. Excise Tax on Liquid Fuels</b>	<b>172</b>
§1. GENERAL PRINCIPLES	172
§2. TAX EXEMPTIONS	172
§3. TAX RATES	173
<b>Chapter 3. Excise Tax on Electricity and Certain Fuels</b>	<b>174</b>
§1. GENERAL PRINCIPLES	174
§2. ELECTRICITY EXCISE TAX CATEGORIES AND TAX RATES	174
§3. EXEMPTION FROM ELECTRICITY EXCISE TAX	176
§4. CERTAIN FUELS: COAL, TALL OIL, NATURAL GAS	176
<b>Chapter 4. Subsidies Relating to Energy Taxation</b>	<b>178</b>
§1. TAX REFUND TO PROFESSIONAL GREENHOUSE CULTIVATORS	178
§2. TAX REFUND TO PROFESSIONAL CULTIVATORS	178
§3. TAX REFUND TO ENERGY-INTENSIVE ENTERPRISES	179
§4. SUPPORT TO PRODUCTION OF ELECTRICITY	179
<b>Chapter 5. Value Added Tax</b>	<b>181</b>
<b>Chapter 6. The Energy Taxation System as an Instrument to Control Energy Production and Energy Use</b>	<b>182</b>
§1. LONG-TERM CLIMATE AND ENERGY STRATEGY	182
§2. WINDFALL PROFITS	184
§3. IEA REPORT	185
<b>Part VI. Interaction between Energy Law and Competition Law</b>	<b>187</b>
<b>Chapter 1. The FCA and the EMA: Jurisdictional Issues</b>	<b>188</b>

## **Table of Contents**

§1. FCA AND THE ACT ON COMPETITION RESTRICTIONS	188
§2. RELATIONSHIP AND THE JURISDICTION BETWEEN FCA AND EMA	190
I. Laws	190
II. Institutions	191
Chapter 2. The Structure of Finnish Energy Markets	194
§1. ELECTRICITY MARKETS	194
I. The Fortum-E.ON Merger Case	196
II. The Finnish Cooperative Companies	197
III. Some Competition-related Remarks on the Mankala Model	200
§2. NATURAL GAS MARKETS	201
Conclusion	203
Index	207

KLUWER LAW INTERNATIONAL

# **Energy Law in Finland**

**Kim Talus**  
**Alice Guimaraes-Purokoski**  
**Arto Rajala**  
**Laura Huomo**  
**Petri Vesa**  
**Tuija Kaijalainen &**  
**Leea Salminen**

This book was originally published as a monograph in the International  
Encyclopaedia of Laws/Energy Law.

General Editor: Roger Blanpain  
Associate General Editor: Michele Colucci  
Volume Editors: Kurt Deketelaere, Bram Delvaux



Law & Business

AUSTIN BOSTON CHICAGO NEW YORK THE NETHERLANDS



*Published by:*  
Kluwer Law International  
PO Box 316  
2400 AH Alphen aan den Rijn  
The Netherlands  
Website: [www.kluwerlaw.com](http://www.kluwerlaw.com)

*Sold and distributed in North, Central and South America by:*  
Aspen Publishers, Inc.  
7201 McKinney Circle  
Frederick, MD 21704  
United States of America  
Email: [customer.service@aspublishers.com](mailto:customer.service@aspublishers.com)

*Sold and distributed in all other countries by:*  
Turpin Distribution Services Ltd.  
Stratton Business Park  
Pegasus Drive, Biggleswade  
Bedfordshire SG18 8TQ  
United Kingdom  
Email: [kluwerlaw@turpin-distribution.com](mailto:kluwerlaw@turpin-distribution.com)

DISCLAIMER: The material in this volume is in the nature of general comment only. It is not offered as advice on any particular matter and should not be taken as such. The editor and the contributing authors expressly disclaim all liability to any person with regard to anything done or omitted to be done, and with respect to the consequences of anything done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this volume. No reader should act or refrain from acting on the basis of any matter contained in this volume without first obtaining professional advice regarding the particular facts and circumstances at issue. Any and all opinions expressed herein are those of the particular author and are not necessarily those of the editor or publisher of this volume.

*Printed on acid-free paper.*

ISBN 978-90-411-3324-3

© 2010 Kluwer Law International BV, The Netherlands

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without written permission from the publisher.

Permission to use this content must be obtained from the copyright owner. Please apply to: Permissions Department, Wolters Kluwer Legal, 76 Ninth Avenue, 7th Floor, New York, NY 10011-5201, USA. Email: [permissions@kluwerlaw.com](mailto:permissions@kluwerlaw.com)

Printed and bound in Great Britain by  
CPI Antony Rowe, Chippenham and Eastbourne