



REPUBLIC OF ALBANIA
ENERGY REGULATOR AUTHORITY
Board



DECISION

No. 36 of March.31.2016

**ON APPROVING THE FINAL CERTIFICATION OF TAP AG AS
INDEPENDENT TRANSMISSION OPERATOR FOR NATURAL GAS**

Based on Law no. 102/2016 articles 13, 37 and 38 “On Natural Gas Sector”; the “Regulation for the Certification of Transmission System Operator for Natural Gas” article 11, approved with Decision no. 100, of August.05.2015 of ERE Board, as amended; point 4.5.2 of the Final Joint Opinion, approved with ERE Board Decision no.64, of June.13.2013; Energy Community Treaty ratified with Law no.9501, of April.03.2006; “Rules for ERE Organization, Functioning and Procedures”; Ministerial Council Decision of Energy Community No.2011/02/MC-EnC; as well as in conformity with 10 of Directive 2009/73/EC and article 3 of the Regulation EC, No.715/2009 as adopted in Ministerial Council Decision of Energy Community No. 2011/02/MC-EnC and ERE Board decision no.130 of October.31.2015, “On approving the preliminary certification of TAP AG for the application made by TAP AG company, regarding the certification as Independent Transmission Operator for Natural Gas” and in Opinion 1/16 of Energy Community on the Certification of TAP AG date February.03.2016, Prot no. 37/2 of February.12.02.2016, ERE Board on their March.31.2016 meeting, after reviewing the report prepared by the working group “On approving the final certification of TAP AG, regarding the certification as Independent Transmission Operator for natural gas and,

Considering that:

- On July.01.2015, TAP AG has submitted at ERE the request prot.no.12/11 of July.06.2015, for the certification as Independent Transmission Operator for Natural Gas in conformity with point 4.5.2 of the Final Joint Opinion, approved with ERE Board of Commissioners Decision no. 64 of June.13.2013, as well as the respective documentation that is accessible in the even in the Data Room established for this purpose.
- This request and the documentation submitted at ERE, is made available also for the Greek and Italian Regulatory Authorities, respectively RAE and AEEGSI, as part of all the necessary documentation for the certification procedure by the three Regulators of the countries where TAP project crosses, so Greece, Albania and Italy.
- Paragraph 4.5, point 2 of the Final Joint Opinion requires that TAP AG to be certified as independent transmission operator for natural gas before the start of construction of the infrastructure and not later than January.1.2018.
- On paragraph of the Final Joint Opinion it is decided the exemption of TAP AG from the rules on ownership unbundling according to article 9, point 1 Directive 2009/73/EC for a 25 years period starting from set into operation of the infrastructure.
- Also referring to Law no.102/2015 article 37 point 6, “On Natural Gas Sector”, ERE preserve the confidentiality of commercial sensitive information during the procedure of TAP AG certification.
- ERE in co-operation with the Greek (RAE) and Italian (AEEGSI) authorities prepared the Joint Draft for the Preliminary Certification of TAP AG which ERE approved with Decision no.130 of October. 31.2015.
- In conformity with Law no. 102/2015 paragraph 4, article 37 “On Natural Gas Sector”, on December.02.2015 was submitted at the Energy Community Secretariat ERE Board Decision no.130 of October.31.2015 together with the Energy Regulator’s Joint Draft for the Preliminary Certification of TAP AG.
- On February.03.2016 Energy Community Secretariat has issued its Opinion No.1/16, registered at ERE with Prot no. 37/2 of February.12.2016, regarding TAP AG Certification based on article 9 Decision 2011/02/MC-EnC of the Energy Community Ministerial Council. ERE on its final certification decision shall consider the Opinion of Energy Community Secretariat.

- Also the European Commission has issued its Opinion on January.28.2016, (registered at ERE with Prot. no. 37/7 of February.15.2016), for AEEGSI and RAE, regarding the Joint Preliminary Decision for TAP AG Certification.
- On point 4.5 of the Final Joint Opinion are defined the respective criterias for the certification before setting into operation the pipeline. In the quality of the responsible authority for the regulation of the natural gas sector and in conformity with Law no. 102/2015 “On Natural Gas Sector”, as well as with the obligations according to Energy Community Treaty ratified with Law no.9501 of April.03.2006, ERE has approved with decision no.100 of August.05.2015, the Regulations for the Certification of Transmission System Operator for Natural Gas, as amended.
- On its request for Certification supported on the documentation, TAP AG has reasoned the compliance with some requirements of Chapter IV Directive 2009/73/EC and is engaged to fulfill within the commercial operation date (COD) of all the remained requirements in conformity with the Road Map.
- Regarding the current activities of TAP AG, that has to do with the allocation of transmission capacities and other activities relating to them, Energy Regulators together has taken all the necessary measures to prevent the discrimination to the third parties by establishing a specific regulatory framework, where it is included the appointment and the activities of the compliance Officer.
- After sending the Energy Community Secretariat Opinion and that of European Commission, the three Regulatory Authorities, the Greek, Italian and Albanian one, co-operated together to accomodate the remarks and suggestions made by Energy Community Secretariat and the European Commission in the joint final draft of the three regulators for TAP AG certification.
- The co-operation between the three Regulators regarding TAP AG Certification as Independent Transmission System Operator for Natural Gas is based on article 4.8.1 of the Final Joint Opinion (FJO) aproved by the three Regulators on June 2013 (ERE Board Decision no. 64, of June.13.2013), article 42 of Directive 2009/73/EC of the European Parliament and of the Council, of July.13.2009, “On the joint rules for the internal market of natural gas” that

abrogates Directive 2003/55/EC”, as well as articles 9, 15 point 1/b, 16 point 25 and 19 point 7 of Law no. 102/2015 “On Natural Gas Sector”.

- Energy Community Secretariat on its Opinion no. 1/2013 the Final Joint Opinion (FJO), has explicitly confirmed its support for equal treatment of the projects in the pan-European internal market (article 7 of the Energy Community Treaty) and for a regulatory harmonised cross-border treatment of these projects.
- After this co-operation, as mentioned above, the three Regulators agreed for the final joint draft of TAP AG certification, registered at ERE with Prot no. 37/8 of March.25.2016. In this draft are discussed and are generally taken into consideration the comments and suggestions made by the Opinions of Energy Community Secretariat and those of the European Commission.
- There should be underlined that both Opinions, that of the European Commission and that of Energy Community Secretariat raised similar issues and problems that required further explanations from the Regulatory Authorities. All these remarks and suggestions of the Commission and the Secretariat are handled and explained in details at the joint draft of the three regulators for the final certification of TAP AG attached to this decision.
- Although, Energy Community Secretariat in its Opinion except what evidenced above, has required from ERE to conduct another certification procedure according to Article 10 of Gas Directive and Article 3 of Gas Regulation at least three months before the commercial operation of TAP pipeline. According to the Secretariat this certification procedure shall be conducted immediately after the notification from TAP at ERE for the full compliance of all the requirements of Chapter IV of Directive 2009/73/EC, except Article 22.
- The European Commission in its Opinion sent to the Italian(AEEGSI) and Greek (RAE) Regulators has not required the conduct of a new certification procedure before the commercial operation date (COD) of TAP pipeline.
- On the joint draft of the three regulatory authorities (ERE, RAE and AEEGSI) for TAP AG final certification, attached to this decision, it is required that TAP AG shall certify that it comply with its obligations in

conformity with ITO rules, Chapter IV of Directive 2009/73/EC, except Article 22. The failure to comply with these obligations by TAP will cause the re-opening of the certification procedure for TAP AG by the three regulators and also the impose of the fines according to the national energy legislations in each country.

- The above mentioned provision set by the three energy regulators on the “Joint Final Decision for TAP AG Certification” resolves the request made by the Secretariat (EnC), 1/16 Opinion, for another later certification of TAP AG regarding the comply by TAP to all the obligations according to Chapter IV Directive 2009/73/EC, except Article 22.

For all of the above mentioned ERE Board

Decided:

1. The Final Approval of TAP AG company Certification as Independent Transmission Operator (ITO) for Natural Gas in conformity with article 10 Directive 2009/73/EC and paragraph 4.5.2 of the Final Joint Opinion. TAP AG Certification will be subject to the conditions set in the “Final Decision for the Certification of TAP AG of the Regulatory Authorities” that is attached to this decision (Annex A) as integral part of it.
2. This decision together with Annex A and the accompanying argumentation regarding the Opinion 1/16 of the Energy Community Secretariat, for TAP AG certification of February.03.2016, shall be published in ERE web-site
3. To send this decision at Energy Community Secretariat, Energy and Industry Ministry, to the Ministry of Economic Development, Trade Turism and Entrepreneurship, to the Competition Authority, at RAE, AEEGSI and TAP AG company.

This decision enters immediately into force.

This decision is published in the Official Gazette.



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ENERGY REGULATOR AUTHORITY
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ERE Board Vote for,

DECISION

No. 36 of March.31.2016

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INDEPENDENT TRANSMISSION OPERATOR FOR NATURAL GAS**

Board Members	Pro-s	Against
Petrit Ahmeti	_____	_____
Adriatik Bego	_____	_____
Entela Shehaj	_____	_____
Abaz Aliko	_____	_____
Maksim Shuli	_____	_____