



REPUBLIC OF ALBANIA
ALBANIAN ENERGY REGULATOR

Board of Commissioners



GUIDELINES FOR MANAGEMENT AND ALLOCATION OF CAPACITY TO THE TRANS ADRIATIC PIPELINE (TAP) PROJECT ACCORDING TO PARAGRAPH 6 OF ARTICLE 36 OF THE DIRECTIVE 2009/73/EC

**PHASE I: INVITATION OF INTERESTED PARTIES TO
EXPRESS THEIR INTEREST IN RESERVING CAPACITY**

Approved of Board of Commissioners
Decision no.39, date 23.04.2012,



Considering that:

- TAP AG company has submitted to the National Authorities of Albania (hereafter: ERE) and Greece (hereafter: RAE) and to the Italian Ministry (Ministro dello Sviluppo Economico) its application for TPA exemption for the project Trans Adriatic Pipeline that lays across the three countries and qualifies as an interconnector;
- The Italian Ministry has invited the Italian National Authority (hereafter: AEEG) to define jointly with RAE and ERE market test procedures for TAP pipeline;
- Directive 2009/73/EC is relevant for Italy and Greece as Member States of the European Union and it has been transposed into the relevant national legislation of each country;
- Directive 2003/55/EC is relevant for Albania as a Contracting Party of the Energy Community and it has been transposed into the national legislation;
- Article 22 of the Directive 2003/55/EC, Article 36 of the Directive 2009/73/EC and national legislation require that, in the case where the infrastructure in question is located in the territory of more than one country, any decision on the TPA exemption should be taken in co-operation between the National Authorities of the countries concerned.
- The Council of Ministers of the Energy Community has decided on October 6, 2011 that Directive 2009/73/EC and Regulation 715/2009 will have to be implemented by all Contracting Parties by the year 2015.

The National Regulatory Authorities of Albania, Greece and Italy have jointly developed these guidelines for the management and allocation of capacity to the TAP project, according to paragraph 6 of Article 36 of the Directive 2009/73/EC, the first phase of which refers to the invitation of interested parties to express their interest in reserving capacity in the above mentioned project.



The National Regulatory Authorities of Albania, Greece and Italy have jointly decided as follows:

Article 1
Definitions

1.1. The following definitions apply:

- a) **Authorities:** The National Regulatory Authorities (NRAs) of Albania (Enti Rregullator i Energjië - ERE), Greece (Regulatory Authority for Energy -RAE), and Italy (Autorità per l'energia elettrica e il gas - AEEG);
- b) **Day(s):** calendar day(s);
- c) **Directive:** The Directive 2009/73/EC;
- d) **Exemption Application:** the exemption application sent by TAP AG company to Authorities (ref. Autorità per l'energia elettrica e il gas 29/08/2011 22591, Enti Rregullator i Energjië (ERE) Prot nr. 478 dt 29/08/2011, RAE Ref. I-143197/31.08.2011);
- e) **Expansion capacity:** expansion of the 10 billion cubic meters/years initial capacity
- f) **Host Countries:** Albania, Greece and Italy;
- g) **Market test:** the process defined in paragraph 6 of the article 36 of the Directive in order to assess the interest of all potential users in contracting capacity before capacity allocation in the new infrastructure takes place;
- h) **Sanctioned Gas:** natural gas which:
 - (a) has been extracted from petroleum deposits in a Sanctioned Jurisdiction (Restricted Gas); or
 - (b) will have been made available to the shipper of that gas as a direct or indirect result or consequence of any contractual or other arrangement to



which the shipper, or any of its affiliates or related persons (the Offtaker), is a party whereby the Offtaker purchases Restricted Gas; or will have been made available to the shipper as a direct or indirect result or consequence of any other arrangement having a similar economic or practical effect.

For these purposes, Sanctioned Jurisdiction means any jurisdiction in respect of which any commercial, import or export activities with that jurisdiction or persons resident in that jurisdiction and subject to sanctions imposed by any of the EU, the UN or the USA, in each case in relation to terrorist activities or sponsorships, or the acquisition or possession of WMD.

- i) **TAP AG:** the company Trans Adriatic Pipeline AG., with registered office in Baar, Switzerland, Lindenstrasse 2;
- j) **TAP project:** the Tran Adriatic Pipeline project.

Article 2

Subject matter and scope

- 2.1 As of Article 36.6 of the Directive, following the “Exemption Application” submitted by TAP AG for the Trans Adriatic Pipeline project, before deciding upon the exemption from Third Party Access, Authorities decide upon rules and mechanisms for management and allocation of capacity. The rules require a *market test* to be implemented.
- 2.2 For the above mentioned TAP project, the *market test* is structured in two phases:
 - 1. *Expression of interest* phase;
 - 2. *Booking* phase.
- 2.3 In the *Expression of interest* phase all potential users, institutions and TSOs are invited to express their interest, according to the present guidelines, in contracting capacity or in connecting to the infrastructure and are asked to submit data and information in order for the Authorities to assess the criteria set in Article 36.1 of



the Directive. The *Expression of interest* phase neither binds participants to book the capacity for which they have expressed their interest nor it binds TAP AG to offer it. However, participation to the *Expression of interest* phase is a prerequisite to access the *Booking* phase.

- 2.4 In the *Booking* phase potential users are requested to bid and subscribe for capacity in the Trans Adriatic Pipeline. As a result of the *Booking* phase, long term capacity is allocated under ship-or-pay contracts, subject to the final investment decision by TAP AG and its shareholders leading to the actual realization of the infrastructure.
- 2.5 The present document provides the general framework for capacity allocation and management procedures and defines, in particular, how to perform the *Expression of interest* phase.

Article 3

Framework rules and mechanisms for capacity allocation and management

- 3.1 Procedures for performing the *Expression of interest* phase of the *market test*, including the expression of interest notice are proposed by TAP AG within 20 (twenty) Days following the issuing of these guidelines and approved by the Authorities within 15 (fifteen) Days after receiving the proposal. Authorities will verify, in particular, that procedures are open, non-discriminatory, transparent and in accordance with EU and national legislation in the Host Countries.
- 3.2 The *Expression of interest* phase of the *market test* is conducted by TAP AG who is responsible for the proper conduct of the proceedings as a result of the approval of the Authorities.
- 3.3 Shareholders of TAP AG will participate in the *Expression of interest* phase of the *market test*, and in the subsequent *Booking* phase, under the same terms and conditions applicable to other interested parties, as set out in the *expression of interest notice*.
- 3.4 Following the conclusion of the *Expression of interest* phase, Authorities, taking into consideration also the report and opinion referred to in Article 7 below, shall



assess if criteria set by Article 36.1 of the Directive are fulfilled and, if so, they express a positive opinion upon granting the exemption. In expressing the positive opinion, consideration will be given by Authorities to the need to impose conditions, according to Article 36.6 of the Directive, regarding among others the duration of the exemption and non-discriminatory access to the infrastructure, taking into account specific national circumstances in the three Host Countries and the technical and economic aspects of the TAP project. The positive opinion may also be conditional on the obligation on TAP AG to offer Expansion capacity in the *Booking* phase and to build it if allocated, in so far as it is technically and economically feasible to do.

- 3.5 If after the *Expression of interest* phase Authorities don't have enough elements to assess if criteria set by Article 36.1 of the Directive are fulfilled and, therefore, they cannot formulate an opinion upon granting the exemption, they may request TAP AG to either provide more information or to implement the *Booking* phase on the capacity requested in the *Expression of interest* phase.
- 3.6 The exemption decision may also include an obligation of TAP AG to run further market tests in subsequent years, with the view to investigate the willingness of potential users to contract additional capacity.
- 3.7 Only in case of need to perform the *Booking* phase the guidelines for the implementation, its detailed design and the amount of capacity available for booking will be issued by the Authorities in line with the principles of the present guidelines.
- 3.8 As a general principle:
 - a) in the *Booking* phase capacity is allocated through auctions;
 - b) tariffs applied to users are cost reflective and non discriminatory.
- 3.9 Detailed rules, products, tariffs and duration of contracts for capacity allocation, as well as mechanisms to deal with cost-overruns and penalties applied to TAP AG if capacity is not delivered on time will be decided by the Authorities before



the *Booking phase*, taking into account the criteria referred in Article 36.1 of the Directive, and the results of the *Expression of Interest* phase.

3.10 Rules for capacity management will be applied also according to the following general principles:

- a) they will include Congestion Management Procedures, Use-It-Or-Lose-It arrangements, secondary capacity trading arrangements, balancing regimes, capacity overruns, nomination and renomination rules compliant with relevant EU provisions as they will be established, amended or integrated by comitology according to the procedure established in articles 6, 7, 23 of Regulation 715/2009 of the Parliament and the Council;
- b) TAP AG will define a network code compliant with the rules mentioned above, subject to Authorities' approval. The network code will provide for a harmonized regime for capacity allocation for the entire route of the TAP project.

Article 4

Expression of interest notice

- 4.1 The *Expression of interest* phase begins with an *expression of interest notice* for capacity allocation to be published by TAP the day after the official approval notice of the procedures foreseen in art. 3.1. The *expression of interest notice* should be sufficiently publicized to attract interest from third parties and allow for their meaningful participation.
- 4.2 Avenues used to publicise the notice should include appropriate national and international media and the TAP AG's website. The notice should be available in English.
- 4.3 The notice should provide general information on the project and therefore the service(s) participants are being proposed. Participants should at least be informed about:



- a) the proposed project's intake and offtake points and route and any alternative designs if applicable;
- b) the proposed project's technical specifications, such as operating pressure and gas quality constraints, if any, at each intake and offtake point, and for each design under consideration;
- c) the estimated in-service date (i.e. when the infrastructure is expected to become operational);
- d) a detailed description of the proposed project's connections to other networks in all three countries, as well as information on the way that TAP AG will pursue with the corresponding expansion of capacity in those other networks for the accommodation of the capacity required for TAP;
- e) the transportation services proposed in the Exemption Application, identified with the contractual intake and offtake points, specifying for each service starting date and duration.
- f) Additional transportation services including at least the following:
 - firm forward transportation of natural gas from the intake point in Greece (Komotini) to any point in Greece, Albania and Italy, including the offtake point in Italy (San Foca, near Lecce);
 - firm and/or interruptible reverse transportation of natural gas from the intake point in Italy to any point in Italy, Albania and Greece, up to the offtake point in Greece;
- g) a non binding estimate of the investment and operating costs, for different possible capacities to be built;
- h) a summary of the situation of authorizations, licences and regulatory approvals and the timetable for ensuing them;



- i) details on how to obtain information on the requirements to be satisfied for admittance by TAP AG to the due diligence procedures and data room, and in particular standard contractual terms in relation to paragraph 5.1 below.

4.4 The notice should also at least include the following general information:

- a) arrangements in place to ensure the confidentiality of information received from the *Expression of interest* phase participants;
- b) a declaration that participation in the expression of interest phase is a prerequisite for participation at the *Booking* phase that might follow;
- c) the start and end dates of the expression of interest phase: the end date must be set at least 2 (two) months after the publication of the *expression of interest notice*;
- d) details on how to make the *expression of interest*, and, in particular, a standard form of the *expression of interest*.

Article 5

Expression of interest

- 5.1 TAP AG may provide for an appropriate due-diligence to disclose to all participants, under a confidentiality agreement, more specific information about the project.
- 5.2 The terms and conditions for access to the data room will be further specified by TAP AG.
- 5.3 In their application for the *Expression of interest* phase, participants have to declare that information provided is true (attested affidavit).
- 5.4 A participation fee may be requested by TAP AG with the sole purpose of covering the administrative costs of the *Expression of interest* phase. Adequacy of the fee is part of Authorities' evaluation as of §0.



- 5.5 Information is to be provided in the TAP AG data room about products offered on natural gas systems in the Host Countries. As far as Italy is concerned connection with TSO (Snam Rete Gas) is done according to deliberation Autorità per l'energia elettrica e il gas ARG/gas 2/2010. As far as Greece is concerned, connection with the National Gas Transmission System, owned and operated by DESFA SA, is done according to the provisions of the Law 4001/2011 (ΦΕΚ 179, 22.08.2011) and of the Network Code (RAE Decision No 1096/2011, ΦΕΚ Β' 2227, 04.1.2011 amending Ministerial Decision Δ1/Α/5346/22.03.2010, ΦΕΚ Β' 379/01.04.2010). As far as Albania is concerned according to the provisions of the Albanian Natural Gas Law No. 9946_dt._30/06/2008.

Article 6

Participation in the Expression of interest phase

- 6.1 All interested parties including TSOs and relevant institutions (governments, ministries of EU Member and non-Member States, financial institutions), as well as market operators, may participate in the *Expression of interest* phase
- 6.2 Market operators' admittance to the *Expression of Interest* phase can be made conditional on reasonable creditworthiness requirements.
- 6.3 When expressing their interest, participants should indicate, at least:
- a) the transportation services they are interested in;
 - b) the type (firm/interruptible), start date, duration and the amount of capacity for each service.

Participants to the *Expression of Interest* phase should be allowed to request differentiated starting dates and duration of the services they require, within the general frame of the corresponding dates proposed by TAP AG.

- 6.4 Participants should not consider to be confined to the proposed route and



therefore in case they are interested in services other than the ones specified in the Expression of interest notice, they can indicate appropriate modifications to TAP AG's proposal that would better accommodate their needs, such as:

- a) additional intake and offtake points to be built along the entire pipeline's proposed route or located elsewhere from the original project;
- b) different starting and ending date of the transportation services or duration;
- c) Interruptible services.

Participants should also indicate the scope of the requested modifications, such as to serve countries in the vicinity of the proposed project route, from other intake and offtake points.

6.5 Market operators must submit their application to TAP AG with a copy to the Authorities, including a declaration to TAP AG that sanctioned gas will not be introduced into or transported through any part of the TAP project. Only on Authorities' copy, applicants should add the following information:

- a) the upstream and downstream transportation systems they will rely upon;
- b) whether they already have capacity booked on these systems or transportation contracts coherent with the required capacity;
- c) source and origin of gas; in particular, applicants have to declare if the requested capacity is to transport gas from Shah Deniz phase II;
- d) Status of the agreements with upstream suppliers (already effective, MOU, other).

6.6 TSOs and institutions participating in the Expression of Interest phase should express their interest to the Authorities and to TAP AG.



- 6.7 For avoidance of any doubt, any further obligations other than those stated in this regulation can't be imposed on participants and on TAP AG in the *Expression of interest* phase.

Article 7

Reporting of TAP AG on the results of the Expression of Interest phase

- 7.1 Within 15 (fifteen) Days after the completion of the *Expression of Interest* phase, TAP AG will deliver to the Authorities a report summarising the results of the *Expression of Interest* phase, including its evaluation on *Expression of interest* phase results, with specific reference to the implications on the project. TAP AG assessment is not binding for the opinion to be given by Authorities as of §7.2.
- 7.2 The Three Authorities will give their opinion on *Expression of interest* phase results within 30 (thirty) days after receiving the summarising report mentioned in art. 7.1.