

REPUBLIC OF ALBANIA
Energy Regulator Authority
Board

DECISION

No 179 of Date 08.11.2017

ON

**THE CERTIFICATION OF THE “COMBINED OPERATOR OF NATURAL GAS ”
ALBGAS COMPANY**

Based on articles 37, 50, 59, 68, and 80 of Law no. 102/2015, “*On Natural Gas Sector*”, the Ministerial Council decision no. D/2011/02/MC-EnC, Energy Community Treaty, ratified with Law no. 9501, of date 03.04.2006, as well as articles 6, 7, 8, 9, 10, 11 of the rules “*On the certification of the Combined Operator for natural gas*”, approved with decision no. 100, of date 05.08.2015 and amended with decision no. 129, of date 31.10.2015, and article 15, of the regulation “*On ERE organisation, operation and procedures*”, and then being informed with the report prepared by the Technical Directories regarding the certification of the “Natural Gas Combined Operator” Albgaz sh.a that in this decision we will refer as transmission system operator (TSO),

Considering that:

- Law no. 102/2015 “On Natural Gas Sector” is fully aligned with Directive 2009/73/EC, of the European Parliament and of the Council, of date 13 July 2009, “Concerning the common rules for the internal market of natural gas”, including the requests provided for the certification of transmission system operators;

- Based on article 80, of Law no. 102/2015, “On Natural Gas Sector”, the Combined Operator exercise its own activity independent of Oil and Gas Sectors namely generation, trading and natural gas supply, in conformity with the principles and requirements prescribed in this law.

- Also on articles 37, 50, 59, 68, and 80, of Law no. 102/2015, “On Natural Gas Sector”, it is defined that before being licensed to perform the activity of operation of transmission system, the Combined Operator shall be certified according to the procedure laid down in these articles. ERE determines the requirements of the application for the certification of the Combined Operator, including the necessary documentation proving the fulfillment of the conditions to apply for the certification of the Combined Operator, according to articles 37, 50, 59, 68, and 80 of this Law. The application for certification is presented by the Combined Operator, in conformity is submitted by the Combined Operator, in accordance with the requirements approved by ERE. Also in these articles it is defined that:

- ERE shall adopt a decision on the certification of the Transmission System Operator within

a period of four (4) months from the date of application and submission of all required documents and information.

- ERE may request from the Combined Operator any information relevant for fulfilment of this obligation.

- ERE notifies Energy Community Secretariat for the preliminary certification of the Transmission System Operator and takes a final decision within 2 months from the date of receiving the opinion from the Energy Community Secretariat, taking into account its recommendations.

- If ERE final decision, is different from the opinion of the Energy Community Secretariat, ERE shall publish and explain the reasons for not accepting them, and shall inform the Secretariat of this decision.

- ERE monitors the compliance of the Transmission System Operator activity with the requirements provided on Law no.102/2015 “On Natural Gas Sector”.

- Based on article 36, points 2, 3, 4, 5, 6, of Law no. 102/2015, “On Natural Gas Sector”, the same entity or entities are not entitled that at the same time to:

a) exercise control directly or indirectly over a licensee performing any of the functions of natural gas and electricity generation or supply, and to exercise control or exercise any right over the Transmission System Operator or over the transmission network;

b) exercise control directly or indirectly over the Transmission System Operator or over the transmission network, and exercise control or exercise any right over an licensee performing any of the functions of natural gas or electricity generation or supply;

c) to appoint members of the supervisory council, the managing board or other bodies legally representing the Transmission System Operator or the transmission network, and directly or indirectly exercise control or any right over a licensee performing any of the functions of natural gas and electricity generation or supply;

ç) be a member of the Supervisory Council, the Management Board or other bodies representing the licensee with the licensees performing any of the functions of natural gas or electricity generation or supply, and that of the Transmission System Operator or transmission network.

3. The prohibitions provided on letters “a”, “b” and “c”, point 2, of this article, shall apply in particular to:

a) the ability to exercise voting rights;

b) the competence to appoint members of the supervisory council, the managing board or other bodies representing the licensee;

c) the right to hold a majority share.

4. The obligation provided on point 2 of this article, is deemed fulfilled if two or more companies, who have their transmission networks, have established a joint venture, which acts as a transmission system operator in two or more countries. No other company may be part of this joint venture, unless the company is defined as independent operator of the transmission system and has been certified pursuant to the conditions determined in this law.

5. Where the person referred to point 2, of this article is a state-controlled public body, the two separate public bodies that exercise control, one over the Transmission System Operator or over a transmission network and the other over the licensee that performs any of the functions of generation or supply, shall be deemed not to be the same person.

6. To the Combined Operator, which was part of a vertically integrated undertaking in conformity with the requirements of this article, take the measures not to disclose or transfer commercially sensitive information to other units of previous vertically integrated undertaking that perform any of natural gas and electricity generation or supply activities.

- Article 36 of the Law: When the person mentioned on the above paragraph is a public body controlled by the state, then the two separate public bodies that exercise control, one over the Transmission System Operator or the transmission grid and the other over a licensee that performs any of the functions of natural gas or electricity generation or supply, shall be deemed not to be the same person.

- Article 35, of Law no. 102/2015, “On Natural Gas Sector ” requires that the Combined Operator to function as a legal person licensed to perform natural gas transmission activity, which owns the transmission system and respects the independence principle, defined on article 36 of the Law as mentioned above.

What is mentioned above, complies with the criteria regarding the incorporation of an operator in one of the legal forms provided and not having confusion about its identity, which shall be clearly distinguished from the one of other undertakings,

- Article 41 of Law no. 102/2015 “On Natural Gas Sector”, has determined the obligations of Transmission System Operator in conformity with the obligations defined in the law.

- In each case, based on article 39 of Law no. 102/2015, “On Natural Gas Sector” and in conformity with article 4 of the Regulation “On the certification of the Transmission System Operator for natural gas”, approved with decision no. 100, of date 05.08.2015 and amended with Decision no. 129, of date 31.10.2015, ERE monitors the compliance of the Transmission System Operator for natural gas and reviews the certification procedure.

With Council of Ministers Decision no. 503 of date 13.09.2017 it is decided “On defining the state responsibility field of the ministry of finance.

Regarding the responsibility field of this ministry it is decided as follows:

The mission of the Ministry of Finance and Economy is to reach an economic stability by effective management, the effectiveness and transparency of the public finances. The ministry prepares and implements the governmental policies in the economic sphere to coordinate the foreign aid, for trade, accommodation and entrepreneurship to construct a new economic model, aiming, the increase, of high and sustainable economy in Albania. This ministry drafts and implements integrated economic policies in primary sectors of economy, economic-social

convergence of the regions of the country, improve the climate and the services for the business and the entrepreneurship.

Also the mission of this Ministry is to guarantee the constitutional rights for education and vocational training, safe and dignified employment, social security.

III. The Ministry of Finance and Economy exercises its activity in this state responsibility areas in conformity with the respective legislation:

1. Macro-economic and fiscal policy;
2. Incomes administration;
3. State budget administration;
4. Public debt management;
5. Financial administration;
6. Financial management and control;
7. Managing the financial assistance of the European Union and co-ordination of foreign aid;
8. Public financial inspection;
9. General co-ordination of the internal audit;
10. Accommodation area;
11. Employment area;
12. Vocational education and training area;
13. Administration of social insurance fund;
14. Free trade Agreements;
15. The area to protect the entrepreneurship and domestic business;
16. Promotion of foreign investments;
17. State ownership administration;
18. Support of public/private partnership;
19. Registration area of economic operators licensing;
20. Accreditation and standardization service area;
21. Maintenance, calibration and inspection of metering devices area;
22. Industrial ownership area;
23. Intellectual ownership protection area;
24. Customer protection area.

IV. The Ministry of Finance and Economy, to realize the responsibility field according to point III, of this decision, is responsible, for:

1. Designing and implementing the fiscal policies, on which are included the macro-economic analysis, foresee of the incomes, public expenses policy, taxes policy, public debt policy;
2. Supervision and undertaken of the legal incentives and steps, to administer the incomes where are mainly included the tax and custom administration;
3. Designation of the policies for well administration of the budget, where are included the planification and implementation of the budget, control of public investments management, monitoring the cross –governmental financial relations, financial control of the public transactions and the design of the governmental consolidated financial statements;
4. Management of public debt, which includes domestic and foreign borrowing portfolio, borrowing risk management as well as debt registration service;

5. Establishment of a modern financial and control system for all public sector units, by setting the rules, standards, procedures and monitoring their implementation;
6. Financial well administration of the public funds, which is realized by exercising the treasure function, implementing the accounting methodology in the public sector and internal public financial control;
7. Managing the European Union financial assistance and co-ordinating the foreign aid. In the function of this well management and ensuring the co-financing, as well as the follow-up to implement the contracts the Ministry of Finance and Economy is responsible even for the legitimacy and regularity of the executed transactions within the decentralized management system and for the effective operation of control management systems within the implementation Instruments for Pre-Assessment (IPA);
8. Public financial inspection, as a function provided to:
 - a) protect the financial interests of the public units to serious financial bad management, fraud and corruption;
 - b) regulation of the transactions and of other public financial management activities;
 - c) defining the violation of normative acts as well as the doubts for the committed frauds;
 - ç) detecting the irregularities for the caused damages in the public units ownership;
 - d) identifying the violations for the responsible individuals for the detected irregularities.
9. Developing the state policies in the field of employment, imigration and employment immigration;
10. Development of the state policies for education and vocational training;
11. Developing the policies in employment relations field, inspection, and safety and health at work field;
12. Developing the policies and monitoring the policies, of the legislation for the activities related to social insurances, as well as work co-ordination work for the social protection schemes with the other countries;
13. Institutional co-operation of the negotiation process and signing the free trade agreement with the region countries and wider;
14. Designation and implementation of the economic policies for protecting the domestic business from unfair practices of international trade;
15. Co-ordination of the program, assessment and monitoring of the foreign investments in the function of national economic development;
16. Exercising the rights deriving from being the owner of the state ownership;
17. Establishing a legislative-institutional climate and environment for the entrepreneurship, by promoting the business and market liberalization, reducing the administrative barriers and the business costs for eliminating informality and corruption, being supported on the continuous public-private partnership;
18. Development of policies in the favor of small and medium enterprises, in conformity with the respective European policy in cooperation with the chambers of commerce, enterprises associations and civil society;
19. Providing the registration and licensing service for the economic operators acting in the Albanian territory;

20. Providing the accreditation service for the conformity assessment bodies;
21. Adoption of the European and international standards and the awareness of the business community for the benefits and technical standard implementation in the products and their services;
22. Development and maintenance of the national standards of the metering units;
23. Calibration and verification of the metering devices;
24. Realisation of the metrological inspection;
25. Proposal for the legal measures in the field of industrial ownership;
26. Registration of the industrial property objects (invention patents, brands, industrial designs and geographical indicators);
27. Protection of intellectual ownership;
28. Supervision and co-ordination of the work for the policies and the institution activities for the quality infrastructure (standartization, accreditation and metrology);
29. Effective supervision of the market to guarantee the compliance of the customers products with the legal requirements regarding them, not to damage the safety or other aspects of protecting the public interest;
30. Co-ordination of the work for harmonization of the legislation in the field of providing the services and full implementation of the national training and non-discriminatory principle.

V. The Ministry of Finance and Economy is the only authority that makes the general co-ordination of the internal audit activity by designing and approving the policies, manuals, methods, procedures, guidelines, and internal audit rules.

VI. This ministry has an overall advisory role on the interest of governmental policies for promoting the effectivity, high performance and well financial governance on the public sector and on the financial institutions where the government takes part.

VII. The Ministry of Finance and Economy represents and protects the state interests within the responsibility area according to point III of this decision.

VIII. Council of Ministers Decisions no. 841, of date 27.09.2013, "On defining the state responsibility of the Ministry of Finance", and decision no. 835, of date 18.9.2013, "On defining the state responsibility for the Ministry of Economic Development, Economy, Trade and Entrepreneurship", as amended, are abrogated.

With Council of Ministers decision no. 504 of date 13.09.2017, it is decided "On defining the state responsibility field for the Ministry of Infrastructure and Energy".

Regarding the responsibility field of this ministry it is set as follows:

II. The Ministry of Infrastructure and Energy has initiated the designation and implementation of general state policy in the planification and urban development sector, in the infrastructure and transport sector, in the telecommunication and postal service sector, in the power sector, energy and mine resources utilization sector and in the industry sector.

III. The Ministry of Infrastructure and Energy exercises its activity in these stare responsibility fields:

1. In the field of planification and sustainable urban development.

2. In the field of urban standards in construction.
3. In the field of urban waste regarding the territorial planning and waste infrastructure.
4. Designation and implementation of the infrastructure development policies, where take part the infrastructure and transport, including pipelines for water supply and sewerage and the coordination of urban waste infrastructure policies in their implementation component and the follow-up and the implementation of these policies.
5. Running, managing, supervising, and setting up of technical standards for road and rail network infrastructure, the pipelines, ports, airports, water supply and sewerage systems, waste disposal sites and large hydro-power dams. The determination and the set of standards for all types of transport means and organization of the state control running for the technical safety in the utilization sphere.
6. Monitoring the realization of standards defined in the function of transport infrastructure development, water supply and sewerage systems, as well as construction works for the implementation of rules for their control and discipline in the financial and technical aspect.
7. Development of a private initiative for the different types of service activities, as well as establishing the conditions for a fair competition between the types of transport and the development of competition in the licensing system.
8. The running, improvement, expansion and development of information services in transport and industries to ensure the resource of the overall and continuous data, for establishing the facilitation conditions for all the users and domestic, foreign operators as well as appropriate ones to engage in the European systems of information.
9. Power sector, energy resources, including renewable energy resources, energy efficiency and climate changes.
10. Hydrocarbon sector (oil and gas).
11. Mining and geology sector.
12. Non-food industry sector.
13. Telecommunication and postal service.

IV. Decisions no. 833, of date 18.9.2013, “On defining the state responsibility field of the Ministry of Energy and Industry”, as amended, decision no. 954, of date 16.10.2013, “On defining the state responsibility field of the Ministry of Transport and Infrastructure ”, no. 944, of date 09.10.2013, “On defining the state responsibility field of the Ministry of Urban Development”, as amended, and no. 943, of date 09.10.2013, “On defining the state responsibility field of the Ministry of State for Innovation and Public Administration ”, of the Council of Ministers, are abrogated.

Implementing Council of Minister Decision no.503 and Council of Minister Decision no.504 of date 13.09.2017, in this decision and any reference after the date 13.09.2017 and as follows shall be understood:

2- On decisions no. 841, of date 27.09.2013 and no. 835, of date 18.09.2013, shall be read Council of Minister Decision no.503 of date 13.09.2017

- 1- On Decisions no. 833, of date 18.09.2013 no. 944, of date 09.10.2013 shall be read Council of Minister Decision no. 504 of date 13.09.2017

Considering that:

- In conformity with what is defined on article 2,5, 6, and 7 of the regulation approved with decision no. 100, of date 05.08.2015 and amended with decision no. 129, of date 31.10.2015, where it is defined that above the criteria that shall be fulfilled by the applicant to enable its certification from the regulator consists in:

- The legal entity that has ownership over the Transmission System Operator for natural gas shall not have the right to directly or indirectly control in other activities;

- On article 7 of the above mentioned regulation, it is defined that, following the implementation of all requirements for the unbundling of the natural gas transmission system operator, the applying company shall inform ERE in the written form and shall submit:

- written application for the certification of natural gas transmission system operator;

- documents, data and information mentioned on Chapter III of the Regulation; and

- completed questionnaire for the certification of natural gas transmission system operator, according to the model provided on the Annex of the Regulation, except in cases where the applying undertaking is exempted, which exemption decision provides the conditions and requests for the activity unbundling. The request for certification as transmission system operator shall be submitted and the necessary procedures for certification shall be independently from the licensing of transmission system operator.

- Certification for natural gas Transmission System Operator shall be performed only once or in the contrary it is reviewed if are performed essential amendments regarding the control of natural gas Transmission System Operator or the owner of natural gas Transmission System Operator certified previously or if amendments have occurred or are foreseen to occur which violate the fulfillment of the criteria defined on these rules.

- On article 8 of the “Regulation on the certification of Transmission System Operator for natural gas” approved with decision no. 100, of date 05.08.2015 and amended with decision no. 129, of date 31.10.2015, are set the data, documentation and the supporting documentation that shall be fulfilled by the applicants to enable the decision-making and the certification. On article 11, it is defined that ERE shall certify the transmission system operator for natural gas, based on the procedures set in this regulation.

Referring to the “Regulation on the certification of Transmission System Operator for natural gas” approved with decision no. 100, of date 05.08.2015 and amended with decision no. 129, of date

31.10.2015”, the “Annex”, the applicant shall complete the Questionnaire for the Certification of the Combined Operator for natural gas, according to the model given in the Annex of this Regulation.

- Submission of the application

- As mentioned above the Combined Operator for Natural Gas Albgaz company, with the official letter Protocol no. 3 of date 20.02.2017, reistered at ERE with Protocol no. 166 of date 20.02.2017, has submitted the request for certification as Combined Operator, based on articles 37, 50, 59, 68, and 80, of Law no. 102/2015, “On Natural Gas Sector”.

- This request is accompanied with the necessary information, defined in the “Regulation on the certification of the Transmission System Operator for natural gas” approved with decision no. 100, of date 05.08.2015 and amended with decision no. 129, of date 31.10.2015”, as well as point 7, of Council of Ministers Decision no. 848, of date 07.12.2016, “On the establishment of Albgaz company and defining the public authority representing the state as the owner of natural gas sector companies”, which define that: immediately after this decision enters into force ALBGAZ SHA, applies at ERE for the certification based on articles 37, 50, 59, 68, and 80 of Law no. 102/2015.

- For the purpose of this application, ALBGAZ company, has submitted at ERE the documentation listed as follows:

- The form where is identified the required documentation in ERE bylaws.

- Declaration of Albgaz company Administrator and of the Supporting Services Director according to article 8 of the regulation approved with decision no. 100, of date 05.08.2015 and amended with decision. 129, of date 31.10.2015.

- This application is accompanied with the documentation provided on article 8 and at the Annex of the rules approved with decision no.100, of date 05.08.2015 and amended with decision no. 129, of date 31.10.2015”.

- The applicant has submitted full information for the name of the company, registration as legal entity, as well as the data regarding its identification as legal subject at the tax bodies (Unique Identification Number NUIS), data regarding the capital and its single shareholder, nominal value, contact data, Address; the company representative in the relation with the third parties etc. Referring to the above mentioned, it results submitted and in conformity with the regulation the required general information.

- Referring to point II of the Annex, the applicant has completed the Ownership Unbundling Form.

Based on articles 37, 50, 59, 68, and 80, of Law. 102/2015, “On Natural Gas Sector”, the Combined Operator performs its activity separately from other activities in natural gas sector, that are not related with the operation of the transmission and distribution systems of LNG plants and the storage facilities .

For what is defined on point 3, of Council of Ministers Decision no. 848, of date 07.12.2016, “On the establishment of Albgaz company and defining the public authority representing the state as the owner of natural gas sector companies ”, results that the single shareholder of Albgaz company with a 100% state owned capital is the Ministry of Economic Development, Turism, Trade and Entrepreneurship (MZHETS).

Also on point 5, of Council of Ministers Decision no. 848, of date 07.12.2016, it is defined that:

The public authority representing the state as the owner of shares Albpetrol company is the Ministry of Energy and Industry.

Following point 6 of Council of Ministers Decision no. 848, of date 07.12.2016, it is defined that:

“The Minister of Energy and Industry and the Minister of Economic Development, Turism, Trade and Entrepreneurship appoint the members of the supervisory councils of Albgaz and Albpetrol companies within 30 (thirty) days from the entry into force of this decision implementing the limitations defined on law no. 102/2015 “On Natural Gas Sector”.

The Council of Minister Decision no. 848 of date 07.12.2016 provides that the scope of the rights that the Ministry of Energy and Industry has over Albgaz company extends as it complies with the provisions of Law no.102/2015, “On natural gas sector”, and its state responsibility area.

So the Ministry of Economic Development, Turism, Trade and Entrepreneurship exercises direct control as the owner of Albgaz company.

The Ministry of Energy and Industry exercises direct control as the owner of Alpetrol company. From the above mentioned being that the generation and transmission activities are developed by companies organized in the form of entrepreneurs (state-owned joint stock companies), the above mentioned authorities perform the function of the Shareholder Assembly for the respective companies taking any decision in the Shareholder Assembly authority in a public limited company according to the provisions of Law no.9901 of date 14.04.2008 “On Entrepreneurs and companies” as amended.

The Ministry Energy and Industry and the Ministry of Economic Development, Turism, Trade and Entrepreneurship are the two high level bodies of the government organized according to Law no. 90/2012 "On the organization and operation of the state administration”.

On article 4 “**The bodies and institutions of state administration**” it is defined that:

1. The prime minister and the ministers are high level bodies of the state administration. They govern and supervise the state administration within the respective area of the state activity.

2. The state administration is composed from these institutions:

a) Prime ministry;

b) The Ministries;

Institutions depending from the Prime Ministry or the ministers;

ç) direct units that provide the services;

d) autonomous agencies;

dh) major administration.

The relations between the ministries and the Council of Ministers are defined on article 5 “The Ministries” as follows:

1. Any ministry is governed and represented by the minister, below the responsible minister. The Minister is responsible in front of the Council of Ministers and the Assembly for the activity of the ministry, the institutions under its administrations and the autonomous agencies hereinafter “ministerial system” within the respective area of the state activity.

2. The Council of Ministers with the Prime minister proposal, defines the state activity area under the responsibility of each ministry, hereinafter “the state administration area”.

3. The ministry performs the administrative functions within the respective area of state responsibility, except those delegated to the depending institutions or that are charged by law to the autonomous agencies.

From all above mentioned each ministry performs the administrative functions within the respective area of state responsibility. The respective responsibility area for the Ministry of Energy and Industry is defined in Council of Ministers Decision no. 833 of date 18.09.2013 “On defining the state responsibility area for the Ministry of Energy and Industry ” and respectively:

II. The Ministry of Energy and Industry drafts and implement the policies to guarantee the electricity supply of the country, utilising the energy and mineral resources in the function of economic stability development and public utility, as well as promoting industrial development in the friendly standards for the environment.

III. The Ministry of Energy and Industry performs its activity in these state responsibility areas, in conformity with the respective legislation:

1. Natural gas sector;

2. Hydrocarbon sector (oil and gas);

3. Mining and geology sector;

4. Non-food industry sector.

The respective legislation based on which the Ministry of Energy and Industry exercises its activity on natural gas sector is law no. 102/2015, "On Natural Gas Sector" and the secondary legislation issued on its implementation.

Concretely the role of the Ministry of Energy and Industry relating to Albgaz company is defined on the articles below of Law no. 102/2015, "On Natural Gas Sector";

On article 5 “**Natural gas sector policies**”

1. The Council of Ministers is responsible for the general policies of the development of the natural gas sector in Albania, in accordance with the economic development policies and other sectors of the country.

2. The ministry responsible for Energy:

- a) is the responsible institution for drafting the development policies in natural gas sector,
- b) drafting and updating the National Energy Strategy, which is approved by the Council of Ministers;
- c) collects and analyses the data and information on the balance of energy in national level, including natural gas sector.

In executing its responsibilities under this law, the Ministry shall consult with other governmental authorities in the energy sector, ERE, as well as natural gas sector stakeholders and interested parties.

The Ministry shall develop policies and programs for:

- a) implementation of natural gas energy objectives and policies;
- b) encouragement of investments in natural gas sector including the possible fiscal incentives;
- c) environmental protection measures in natural gas sector;
- ç) development of safe and sustainable networks and other natural gas infrastructure;
- d) harmonization with the European Union standards and regulations in this sector and ensuring inter-operability of Albanian natural gas systems with the regional and European systems;
- dh) development of programs for protection of vulnerable customers in collaboration with other authorities and state institutions;
- e) assure a secure and sustainable development of natural gas sector.

The Minister, in compliance with the criteria and procedures established by a decision of the Council of Ministers, issues professional certificates for specialists performing studying - designing and implementing activities in the fields defined in this law, and in the activities of exploration, production, processing, transportation, storing and trading of hydrocarbons in

general. For exercising the study-design activity, natural or legal persons, must obtain a licence in the category IV.4.B, under law no. 10.081, dated 23.02.2009, "On the licenses, authorizations and Permits in the Republic of Albania".

On article 6 of Law no. 102/2015 "On Natural Gas Sector" "**Security of natural gas supply**"

The Council of Ministers, at the proposal of the Minister, shall adopt the Emergency Plan, which shall specify adequate minimum security of supply standards and regulate the provisions for securing a reliable and efficient gas supply. The Emergency Plan inter alia shall contain:

a) instruments and measures ensuring the appropriate and defined supply of the protected customers, in the event of:

i) a partial disruption of supply;

ii) extremely cold temperatures during a determined peak period;

iii) periods of exceptionally high gas demand during the coldest weather periods;

b) a schedule for the reduction or cessation of natural gas supply to particular categories of customers in the case of a crisis situation;

c) the role and responsibilities of natural gas undertakings and of non-household gas customers, taking into account different extents to which they are affected in the event of a crisis situation in the natural gas sector;

ç) requirements for storage facilities, with the aim of achieving the security of supply standards as well as possible contribution of storage, either located in Albania or another Energy Community member country;

d) other relevant measures and actions to be taken to remove or mitigate the impact of a gas supply disruption, as applied considering clearly defined crisis levels.

2. The gas market participants shall plan and take measures for a safe gas supply in accordance with the standards, as referred to in paragraph 1 of this article, and shall be responsible for the security of gas supply within their scope of activity.

3. The ERE shall be the responsible authority for monitoring of the security of supply.

4. The Emergency Plan shall not be discriminatory nor shall foresee unreasonable obligations on new or existing participants of gas market.

5. The Emergency Plan shall be made available to the Energy Community Secretariat.

6. If an adequate level of interconnection is available, the Ministry or the natural gas undertaking in charge may take the appropriate measures to achieve the security of supply standards using storage facilities located within the territory of the other Contracting Party. For this purpose, possible cooperation with authorities and/or natural gas undertaking of EU member or another party of Energy Community, may apply, including entering into bilateral agreements. The application of these measures shall not impede the proper functioning of the internal gas market.

On article 7 of Law no. 102/2015 "On Natural Gas Sector" "**The authority in charge for supervision of supply security**"

The Ministry is the responsible authority for the supervision of natural gas supply security and shall in particular cover:

- a) proper implementation of the supply security minimal standards, as stipulated in article 6 of this law;
- b) the balance of supply and demand on natural gas market of Albania;
- c) long-term contracts of gas supply imported from third countries;
- ç) the existence of adequate liquidity of gas supplies;
- d) the level of working gas and of the withdrawal capacity of gas storage;
- dh) the level of interconnections of the natural gas system of Albania with the systems of its neighbouring Energy Community parties;
- e) the level of expected future demand and available supplies and, consequently, the foreseeable gas supply situation in function of demand, supply autonomy and available supply sources;
- ë) additional capacity planned or under construction;
- f) the quality and level of maintenance of the networks;
- g) measures to cover peak demand and to deal with shortfalls of one or more suppliers.

2. By 31 July each year the Ministry, in collaboration with ERE, shall prepare and publish a report outlining the findings resulting from the monitoring of those issues specified in paragraph 1 of this article, as well as any measures taken or envisaged to address them.

3. report referred to in paragraph 2 of this article shall cover the following issues:

- a) the competition state in the natural gas market and the impact that creates the application of the measures taken pursuant to article 6 of this law on all participants in the natural gas market;
- b) levels of storage capacities;
- c) the extent of long term gas supply contracts concluded by companies established and registered in Albania, and in particular their remaining duration, based on information provided by the companies concerned, but excluding commercially sensitive information, and the degree of liquidity of the gas market;
- ç) the regulatory frameworks to provide adequate incentives for new investment in exploration and production, storage, LNG and transport of gas, taking into account article 78 of this law.

4. The report prepared and published by the Ministry shall be submitted to the Council of the Ministers, as well as to the Energy Community Secretariat.

On article 8 of Law no. 102/2015 “On Natural Gas Sector” **“Safeguard measures for supply security”**

In the event of a sudden crisis in the energy market or where the physical safety of persons, apparatus or installations or system integrity is threatened, the Ministry in coordination with respective authorities, may undertake the necessary temporary safeguard measures. Temporary application of safeguard measures requires for these measures to be clearly limited in time and applied no longer than for a justified period which is reasonably necessary to address the emergency situation and to alleviate its threats.

2. Measures undertaken in cases set forth in paragraph 1 of this article shall be applied and coordinated duly following the Emergency Plan, as referred to in article 6 of this law, in a way to cause the least possible disturbance to the functioning of the internal market and shall not be

wider in scope than is strictly necessary to remedy the sudden difficulties which have arisen. All such measures shall be applied temporarily in an objective, transparent and non-discriminatory manner. The Minister shall immediately notify the Council of Ministers and, when he considers necessary, other countries party of Energy Community with which Albania has cooperation relationship in the natural gas sector, concerning the safeguard actions according to paragraph 1 of this article.

4. The Minister without delay shall notify the Energy Community Secretariat on these safeguard measures undertaken according to paragraph 1 of this article.

5. In cases where the crisis situation in the natural gas sector cannot be adequately managed with national measures, the Minister shall notify the Chair of the Security of Supply Coordination Group of the Energy Community, which shall forthwith convene an *ad hoc* meeting of the Security of Supply Coordination Group for examination and, where appropriate, assisting Albania and/or other Energy Community Parties concerned in coordinating the measures taken at national level to deal with the crisis situation in the natural gas sector.

On article 10 of Law no. 102/2015 “On Natural Gas Sector” **“Technical and safety rules in natural gas sector”**

1. With the proposal of the Minister, the Council of Ministers shall approve the technical rules and safety criteria establishing the minimal requirements of technical design, construction and operation concerning the transmission and distribution systems, LNG facilities, storage facilities, direct lines, as well as any other facility, equipment or installation falling under natural gas sector in order to ensure the safe-operation of the systems.

With the proposal of the Minister, the Council of Ministers shall approve the technical rules of performing the natural gas storage operation at hydrocarbon fields or other underground facilities.

2. Until the approval of these rules by the Council of Ministers in accordance with point 1 of this Article, the Minister shall define the technical rules and safety criteria to be implemented in the interim period in compliance with the norms of EU countries

3. The control of implementation and observation of the rules provided for in paragraph 1 of this article in the natural gas sector shall be carried out by Responsible Inspectorate according to the legislation in force.

4. Entities exercising their activity in accordance with the provisions of this law, are responsible for carrying out these activities in compliance with the technical rules and standards as well as they must comply with the terms and conditions for the environmental protection as specified under this law or other statutory laws and relevant by-laws.

On article 11 **“Construction and use of natural gas pipelines and infrastructure”**

1. The construction and utilisation of natural gas transmission and distribution pipelines, LNG facilities, storage facilities of natural gas, direct lines, the interconnection of the Albanian natural gas system with the neighbouring systems, as well as any other facility, equipment or installation falling under natural gas sector shall be made by approval of the Council of Ministers.

2. With the proposal of the Minister, the Council of Ministers shall approve the conditions and procedures for granting the permits for construction and use of the pipeline for natural gas infrastructure on transparent and non-discriminatory basis. The agreement connected between the Ministry and the investor must include at least the following conditions:

- a. secure functioning of natural gas system;
- b. conditions for establishing the location and land use;
- c. energy efficiency;
- ç) conditions for primary energy sources use;
- d) protection at work and safety of people and assets;
- dh) environmental protection;
- e) financial capability of the applicant to carry out the natural gas facility construction verified by bank documents or similar documents which prove the financial capability of the applicant;
- ë) Capacity contribution for natural gas transport or storage to increase security of supply;
- f) general conditions of the agreement achieved between the responsible ministry and the investor which shall construct and use the natural gas facility;
- g) the conditions over the document which proves the ownership over the immovable property, when the natural gas facility is planned to be constructed;
- gj) list of documents requested for obtaining approval;
- h) applicable tariffs for the approval of construction and usage of pipelines and the natural gas infrastructure;
- i) conditions of refusal of approval.

3. The permit shall be granted for a term of up to 30 years with the right to be renewed. In cases where the permit is not renewed after its expiration, the infrastructure shall be dismantled, in compliance with environmental standards stipulated by the law or the property rights over the infrastructure shall be transferred to the State or to the other investor under the terms and conditions provided in the agreement stipulated in point 2, paragraph f, of this article. The decision to refuse the approval shall be justified. In case of the transfer of the property rights to the state, the agreement shall provide the terms and conditions of such transfer between parties included in the signed contract.

4. The Council of Ministers, except for the refusal cases, defined in point 2, paragraph (i) of this article, with the purpose of efficient operation of the gas infrastructure, has the right to refuse the approval for the construction and usage of the pipeline distribution system in a particular area, in case that for the area has been previously submitted an investment proposal or if the existing infrastructure capacity of gas in that area covers the requested capacity.

5. Refusal to grant permission may be appealed by the applicant under the terms and conditions stipulated in this law and/or other applicable laws.

6. The approval granted according to paragraph 1 of this article shall not exclude obtaining other permits, licenses or other authorisations, as the case may be, according to the legislation on the territorial planning and development of the natural gas infrastructure as defined on paragraph 1

of the very article as well as the environmental protection and compliance with technical safety rules in force.

7. Modification of the permit may be required by the holder of the permit in accordance with paragraph 1, of this Article. The modification of the approval must not fall out of the permit's object for which this approval was provided.

8. Approvals issued in compliance with this article cannot be transferred.

On article 46 **Network development and investment decisions, it is provided that:**

1. The Combined Operator, within 12 months from entering into force of this law, shall submit to ERE a ten-year transmission network development plan based on supply and demand, which is being reviewed by 31st October of the previous year, after having consulted all the relevant parties and taking into account existing and planned forecast of supply and demand.. The transmission network development plan shall contain efficient measures in order to guarantee the adequacy of the network and security of supply.

2. The network development plan shall:

a) take into account the information for the natural gas market participants, as well as information on the main transmission infrastructure that needs to be built or upgraded over the next 10 (ten) years;

b) contain all the investments already approved and identify new investments which have to be executed in the next three years;

c) provide for a time frame for all investment projects

3. When elaborating the ten-year network development plan, the TSO shall make reasonable assumptions about the production, supply, consumption and exchanges of natural gas with other countries, taking into account investment plans for surrounding networks as well as investment plan for the storage facilities and LNG re-gasification.

4. The ERE shall consult all actual or potential system users regarding the ten-year network development plan in an open and transparent manner. The ERE shall publish the result of the consultation process, in particular possible needs for investments.

5. ERE shall examine the ten-year network development plan, if it finds that, there are not completed all the needs for the developments of the identified investments during the consultation process, require to the Combined Operator to fulfill and/or amend its ten-year network development plan.

6. The ERE shall approve, monitor and evaluate the implementation of the ten-year network development plan.

7. When ERE identifies that the TSO, has not performed for three years a forecasted investment in accordance with the 10 year plan, and considers that such investment is necessary and may be financed without hindering the normal operation of the network, shall request from TSO the following measures:

a) execute the investments in question;

b) organise a competitive procedure for realizing the investment in question, open to any investor;

c) accept the increase of the capital, to finance the necessary investments and to permit independent investors to participate in the capital of the company.

8. When ERE takes the measures, according to letter “b”, point 7, of this article, it may oblige the TSO to implement one or more of the following options:

- a) ensure financing by any third party;
- b) require construction by any third party;
- c) building the new concerned assets itself within a reasonable deadline;
- ç) operate the new assets after construction.

9. ALBGAZ shall provide the investors with all information needed to realise the investments, and shall generally make its best efforts to facilitate the implementation of the investment project. The relevant financial arrangements shall be subject to approval by the ERE.

10. Where the ERE has made use of its powers under paragraphs 7 and 8 of this article, shall take the opinion of the ministry responsible for energy.

11. ERE take measures that investment costs are covered by the relevant fees and unrealized investments to be taken into account during the next year tariff approval.

12. ERE drafts and approves a regulation on the procedures for the submission and approval of investment plans

Lastly on Article 84 “Natural gas market” it is provided that:

The natural gas market shall include the retail and wholesale natural gas market

2. Transactions between final customers and their suppliers shall take place on the retail natural gas market.

3. The wholesale natural gas market shall include:

- a) bilateral natural gas agreement, excluding the agreements related between the parties, in accordance with point 2, of this article;
- b) day-ahead natural gas market for the delivery of natural gas;
- c) balancing natural gas market.

4. Purchase and sale on the wholesale natural gas market shall be contracted under bilateral agreements, as well as on organised natural gas markets, that are day-ahead natural gas markets for delivering the quantity of natural gas and balancing the natural gas market.

5. ALBGAZ ensures the balancing services, in conformity with the balancing rules which are approved by ERE.

6. The Balancing rules shall define the terms and conditions related to balancing, including rules for: balancing service providers, procurement of balancing services, determination of quantities and financial criteria to be settled with balance service providers.

7. ALBGAZ shall cooperate with transmission system operators from other countries to facilitate the balancing market at a regional level, to ensure operational security and efficient functioning of balancing market based on the effective competition, non-discrimination and transparency.

The respective responsibility area of the Ministry of Economic Development, Tourism, trade and Entrepreneurship is defined on Council of Ministers Decision no. 835 of date 18.09.2013 “On defining the state responsibility area for the Ministry of Economic Development, Tourism, Trade and Entrepreneurship” as amended.

Regarding the role of the Ministry of Economic Development, Tourism, Trade and Entrepreneurship in report with Albgaaz company we explain as follows:

It results that Albgaaz company is organized in the form of a joint stock company with 100% state capital. This is in conformity with the definitions of Law no.102/2015, "On Natural Gas Sector", where on article 80 it is defined that:

A combined operator means that the same natural gas undertaking may be licensed to perform the transmission, distribution, LNG and / or storage plants, on the condition to respect the requirements for the unbundling from any system operator, as provided by this law and to be independent from the companies that perform any of the functions related to production, supply or trading.

3. The combined system operator that represents a certain part of the vertically integrated company, will arrange its activities as an independent legal entity, unbundled from the activities of gas production, gas trade and gas supply.

The Council of Ministers defines the public authority representing the state as the owner of Combined Operator shares, which shall be independent from generation or supply activities, within the meaning of article 80 of the law.

Implementing Law no. 102/2015 "On Natural Gas Sector" it is approved Council of Ministers Decision no. 848 of date 07.12.2016, "On the establishment of Albgaaz company and defining the Public Authority representing the State as the owner of Albpetrol company and Albgaaz company shares", which defines as follows:

"The public authority, representing the state as the owner of Albpetrol company shares is the Ministry of Energy and Industry."

The public authority, representing the state as the owner of Albgaaz company shares is the Ministry of Economic Development, Tourism, Trade and Entrepreneurship.

The Minister of Economic Development, Trade, Tourism and Entrepreneurship and the Minister of Energy and Industry, within 30 (thirty) days from the day this decision enters into force, follow the necessary procedures, for:

- a) registration to reduce the capital of "Albpetrol" company, the transfer of the reduced capital value to "Albgaaz" company, and also the completion of the procedures to register "Albgaaz" company, at National Business Center;
- b) the appointment of Supervisory Council members of "Albgaaz" and "Albpetrol" companies, respecting the limitations defined on Law no. 102/2015, "On Natural Gas Sector".

- Also on article 1 Law no. 8/2016 for an addition and an amendment on Law no. 7926, of date 20.4.1995, "On transforming the state companies in entrepreneurs", as amended is defined that:

“Exercising the right of the state property owner representative, including the right to appoint the supervisory council members, in power sector companies, shall be in conformity with the definitions of Law no. 102/2015 “On Natural Gas Sector.”

Regarding this concern of the Secretariat, ERE develops that regarding the role of the Council of Ministers and the Prime Minister in report with the Ministry of Energy and Industry and the relations of the Prime Minister with the Ministries, these elements are defined on Law no. 90/2012, “*On the organization and operation of state administration*”, which regulates the organization and operation of the state administration under Council of Minister’s responsibility, by defining the criteria for the establishment and operation of the state institutions.

On article 4 of this Law, “The bodies and institutions of state administration” it is defined that:

“1. The prime minister and the ministers are high level bodies of the state administration. They govern and supervise the state administration within the respective area of the state activity”.

2. The state administration is composed from these institutions:

a) The Prime ministry;

b) ministries;

c) institutions depending on the Prime Minister or of the ministers;

ç) direct units that provide the services;

d) autonomous agencies;

dh) major administration.

3. The ministries and the depending institutions may have territorial branches according to this law

Whereas the responsibilities of the Prime Minister are defined on article 102 of the Albanian Constitution. Concretely, Article 102 of the Constitution defines that the Prime Minister has the following responsibilities:

a. Represents the Council of Ministers and chairs its meetings;

b. Outlines and presents the principal general policies of the state and is responsible for them;

c. Assures the implementation of the legislation and of the policies approved by the Council of Ministers;

d. Coordinates and supervises the work of the members of the Council of Ministers and other institutions of the central state administration;

- e. Performs other duties prescribed in the Constitution and the laws
2. The Prime Minister resolves the disagreements among the ministers.
3. The Prime Minister, issues orders in the exercise of his powers.
4. Within the general principal policies of the state, a minister, directs under his responsibility, activities within his competence. A minister issues orders and instructions in the exercise of his powers”.

According to the provisions of the Constitution and Law no. 90/2012 “On the organisation of the state administration” as mentioned above, any legal gap can be noted that can allow the Prime Minister to influence in the powers of other ministries.

On the other hand the relations between the Ministries and the Council of Minister are defined by article 5 of Law no. 90/2012 “On the organization and operation of the state administration”. This article established that:

1. Each ministry is headed and represented by the Minister, hereinafter the “responsible minister”. The Minister is responsible before the Council of Ministers and the Assembly in respect of the activities of the ministry, subordinate institutions and autonomous agencies, herein the “ministerial system”, within the relevant field state activity.
2. The Council of Ministers, with the proposal of the Prime Minister, sets out the state’s new field of activity in the responsibility of each ministry, hereinafter “areas of state administration”
3. The Ministry performs all administrative functions within the respective scope of the state responsibility, except those expressly delegated to subsidiary institutions or agencies charged by the law for autonomous agencies.
4. The ministry is also responsible for the coordination and according to the delegation of the Minister, for supervising the activities of the depending institutions and autonomous agencies within the respective field of ministerial responsibility.
5. The organization of the ministry includes the Ministry and its territorial branches, if it is the case”.

As it can be seen by these legal provisions, the Minister is responsible before the Council of Ministers and before the Parliament for the activity of the ministry, the institutions under its administration and autonomous agencies within the respective area of the state activity.

Whereas, regarding the responsibility of the Minister, it’s the Council of Ministers which according the proposal of the Prime Minister, determines the respective state activity under the responsibility of each ministry, hereinafter the “*state administration field*”. In this way, each Ministry performs all administrative functions in the respective field of state responsibility, except those functions expressly delegated to the depending institutions and autonomous agencies, within the respective field of ministerial responsibility.

From all the above mentioned findings, it can be concluded that each Ministry performs the administrative functions in the respective state responsibility.

While regarding the role of the Council of Ministers about TSO company, reference is made on the following provisions of the Law.

Firstly, referring to article 5 of this Law, where it is defined that: “The Council of Ministers is responsible for the general policies of the development of the natural gas sector in Albania, as well as setting incentives that apply to operators of natural gas sector, in accordance with the economic development policies and other sectors of the country”.

Also on article 1 of Law no. 8/2016 “*For and addition and a change on Law no. 7926, dated as of 20.04.1995, “On transforming the state companies”, as amended* it is expressly determined that:

“Exercising the state right to represent the property owner, including the right to appoint the members of the supervisory council, in power sector companies, shall be in conformity with the definitions of Law no. 43/2015, “On Power Sector”, and for natural gas companies shall be in conformity with the definitions of Law no. 102/2015 “On Natural Gas Sector”.

So, from all of the aforementioned legal provisions, it results that each of the respective ministries shall perform the function of the share owner in their respective companies.

As has been pointed out above, it is the Council of Ministers which, with the proposal of the Prime Minister, sets out the state activity scope under the responsibility of each ministry, thus the “state administration scope”. Whereas, the Ministry performs all administrative functions within the respective scope of the state responsibility, except those expressly delegated to subsidiary institutions or agencies charged by the law for autonomous agencies. On the other hand, the report of the Ministry of Economic Development, Tourism, Trade and Entrepreneurship and the Ministry of Finance has to be treated under the responsibility of “the state administration”, as issued from the respective administration bodies.

Based on article 41 of Law 102/2015 “On Natural Gas Sector” the rights and responsibilities of the Transmission System Operator are clearly defined and as such TSO company operations shall be performed under the limitation of this Law.

It can be appropriate to highlight that, article 35 of this law defines that the Transmission System Operator shall be a legal person licensed by ERE to perform the activity of operating as a natural gas transmission system, which owns the transmission system and respects the independence criteria according to article 36 of this Law.

Furthermore, it is worth mentioning that the role of the Council of Ministers regarding the investments plans of TSO company, is limited only in the capability of the Council of Ministers of the Republic of Albania for the approval of the new interconnection lines. ERE while

approving the development of the ten year plan shall take in consideration the possible decision of the Council of Ministers in link with this issue.

For the effect of the evaluation of the legal and functional autonomy of the Minister, may be considered the practical aspect that has to do with the procedure for the appointment and dismissal of a minister, as well as by an analysis of the decision-making process of a minister.

For the purposes of this further analysis, the following legal documents has been taken into consideration:

- (i) The Constitution of the Republic of Albania approved by Law no. 8417, dated 21.10.1998, “The Constitution of the Republic of Albania”, as amended (hereinafter the “Constitution”);
- (ii) Law no. 90/2012, of date 27.09.2012 “On the Organisation and the Functioning of the State Administration, (hereinafter the “Law on State Administration”);
- (iii) Law no. 9000, dated 30.01.2003 “On the Organisation and the Functioning of the Council of Ministers” (hereinafter the “Law on the Council of Ministers”);
- (iv) Council of Minister Decision no. 833, dated 18.09.2013 “On determining the scope of state responsibility of the Ministry of Energy and Industry, as amended (hereinafter “CMD 833”);
- (v) Council of Ministers Decision no. 835, dated 18.09.2013 “On determining the scope of state responsibility of the Ministry of Economic Development, Trade and Entrepreneurship”, as amended (hereinafter “CMD 835”); and
- (v) The case law of the Constitutional Court of Albania.

Regarding the procedure and method how the Minister is appointed and the procedure by which he is dismissed it is noted that: Article 98 of the Constitution states that a Minister “is appointed and dismissed by the President of the Republic, on the proposal of the Prime Minister, within 7 days. The decree is reviewed by the Assembly within 10 days”.

This provision clearly defines that in the process of the appointment and dismissal of a Minister shall participate three decision-making bodies – a) the Prime Minister, b) the President of the Republic, and c) the Assembly. Specifically, it can be noticed that the Minister is “appointed and dismissed” by the President of the Republic, but the proposal must come from the Prime Minister, who may at all times undertake the initiative for appointing as well as dismissing a Minister. However, it should be noted that the Assembly plays an important role in this process, because the “decree” from the President must be reviewed by the Assembly within 10 days.

Albanian’s Constitutional Court, in its Decision No. 6, dated 18.01.2002 has analysed and expressed its opinion regarding the concept for the “review” process which belongs to the Assembly. In this case law, the Constitutional Court stated that: “with the word “review”, under Article 98 paragraph 2 of the Constitution, it is understood the Assembly’s right and obligation to discuss and debate the Decree of the President, and to take a decision regarding its approval or disapproval. The review of the Decree of the President of the Republic, issued in accordance

with paragraph 2 of article 98 of the Constitution, is not limited to a formal review, but to a substantive review.

This means that, as a Parliamentary Republic, it is the Assembly which ultimately decides through vote for the appointment or dismissal of a Minister. Furthermore, in this Decision the Constitutional Court also analyzed the nature of the Decree of the President of the Republic regarding the appointment or dismissal of a Minister, its legal effect and the conditions necessary for its entry in force or its revocation. From this analysis, the Constitutional Court concluded that the presidential decree, “as an individual act issued by a competent body, enters into force or it is revoked after the Assembly takes a decision on its approval or disapproval at the end of the review process”.

Thus, based on the Decision, although the Prime Minister has the initiative to appoint or dismiss a Minister and makes such proposal to the President, it is the President who accesses such proposal and issues a Presidential decree, while the legal effect of such decree commences only upon review of the Assembly as expressed through its vote.

Therefore, in theory there are limitations in the discretionary power of the Prime Minister to appoint or dismiss a Minister. The initiative of the Prime Minister is not sufficient since the Constitution requires the issuance of a decree by the President and the vote in favor of the Assembly.

However, a review of the political history of Albania demonstrates that a “constitutional deadlock” situation can occur very rarely. Even on cases when the appointment is proposed by a Prime Minister belonging to a political party that is in opposition with the President’s party, the President of the Republic has not refused so far to enact his proposals. On the other hand, in order for the Prime Ministers proposal and the Presidential decree to be rejected in Assembly, appointment or dismissal must be in conflict with the will of the governing majority in Assembly.

Given that the Prime Minister is nominated by a governing majority, such a situation in practice is extremely rare, and may appear in cases where the dismissal affects a particular minister who enjoys a broad support in the Assembly, or belongs to a party in the governing coalition, without the votes of which the decree of its dismissal cannot be approved.

In Albania’s recent post-communist history, a similar case has only occurred in 2002. At that time, due to conflicts within the majority, the Assembly overstepped the 10 days’ time limit set by the Constitution, refusing to review for a long time the Presidential decrees to appoint some new Ministers. While this political crisis was waiting to be resolved, the country was ruled for several months by the respective deputy ministers.

Although, in order to assess the degree of autonomy of a Minister, besides the procedure and method of his appointment and dismissal, his powers and decision-making activities must also be analysed.

As it is known, it is the Albanian Constitution that outlines the responsibilities of the Council of Ministers and the Prime Minister. Article 100 of the Constitution states that, “The Council of Ministers determines the principal directions of the general state policy”. Furthermore, Article 95, paragraph 2 provides the Council of Ministers with a broad decision-making and discretionary authority. Thus, the Constitution determines that: “The Council of Ministers exercises every state function that is not given to other bodies of State power or local government”.

At the same time, the Council of Ministers is a collegiate body which is represented and chaired by the Prime Minister, who according to paragraph 1 of Article 102 of the Constitution, “Outlines and presents the principal directions of general state policy and is responsible for them; assures the implementation of legislation and policies approved by the Council of Ministers; coordinates and supervises the work of the members of the Council of Ministers and other institutions of the central state administration”. Furthermore, the Prime Minister has the authority to “resolve disagreements between ministers”.

The role of a minister is defined on paragraph 4 of Article 102 of the Constitution and it seems to be well defined in relation to the role of the Council of Ministers and that of the Prime Minister. According to this provision “within the principal directions of general state policy, directs, under his responsibility, actions for which he has powers. The minister, in the exercise of his powers, issues orders and instructions”. Thus, as it can be seen from the above provisions, the Constitution has set to the Council of Ministers the highest executive role. However, it is also clear and undisputable that the Prime Minister has a central executive role, which is exercised both through shaping the government policies that are object of approval to the Council of Ministers.

However, despite what is defined in the Constitution, to access the decision-making autonomy of a ministry, this autonomy shall be analysed under the responsibility field of the respective Ministry that he governs.

So, Article 4 of “State Administration Law” states that “the Prime Minister and Ministers are the highest bodies of state administration. They lead and supervise the state administration within their respective field of state activity.” While Article 3(5) emphasises “the principle of clear allocation in defining the responsibilities”, so that the allocation and assignment of administrative functions and tasks, between bodies, institutions and administrative units shall be transparent and public.

Based on article 5 of this law, it is the Council of Ministers that upon the proposal of the Prime Minister determines the field of state activity and the responsibilities for each ministry. Further, on this law it is defined that “each ministry is directed and represented by the Minister, who is responsible before the Council of Ministers and the Assembly for the entire activity of the Ministry”. Also on article 22 of this law it is emphasised once again that each minister is responsible to supervise the activity of the ministry, the subordinate institutions and autonomous agencies within the state responsibility area.

From the above summary it is noticed a clear allocation of the hierarchical legal framework and the responsibilities of the Prime Minister, the Council of Minister and the Ministers.

Concretely, the Prime Minister proposes the field of activity, competencies and responsibilities for a particular Ministry in accordance with his vision for the state's general policies. However, the Prime ministers proposal must be reviewed and decided upon by the Council of Ministers. This means that the responsibility field of each Minister is not defined only by the Prime Minister but it is defined by a collegial body, such as the Council of Ministers, which decides by a majority vote of its members, while recognizing the right of Ministers to express their opinions and to vote. Once such responsibilities are approved by the Council of Ministers, the direction and the representation of the ministry as an institution is carried out only by the responsible Minister.

Besides the Law on State Administration, regarding this concern it is important to analyse the Law on the Council of Ministers, which provides the organization and operation of this executive body.

The Law on the Council of Ministers under article 1 thereof, regulates the organization and operation of the "Council of Ministers, the Prime Minister, the Deputy Minister, the Minister, of the institutions depending on their [...] bilateral relations, as well as the secondary legislation that these bodies issue". Similarly with the Law on State Administration, this law also provides that the Prime Minister, the Minister and the Council of Ministers are separate and distinct entities from each other.

While the Prime Minister's duties are listed in Article 2 of this law. According to this law, the Prime Minister: "a) represents and leads the premiership; b) requests explanations reports and administrative verifications from responsible ministers for issues that they cover; c) at his own initiative or at the request of the parties concerned, the Prime Minister suspends the implementation of acts of ministers, heads of central institution under his supervision or of the ministers, when it finds violations of the Constitution, laws, or acts of the Council of Ministers".

This provision defines as competence of the Prime Minister, the possibility that he could demand explanations to the Ministers, as well as the possibility to suspend the implementation of acts of Ministers, when violations of the legislation are found. It is worth mentioning that although to the Prime Minister is not explicitly recognized the right to change, withdraw, revoke or invalidate an act of the Minister, but the right of suspension of the act of the Minister by the Prime Minister, is however an important right that provides him with the power to influence in the activity of a minister.

Also, it is worth mentioning that the suspension itself is a temporary interruption of the legal effects of an act, which after suspension will continue to produce all its effects, while the revocation of an act shall mean the interruption of the legal effects, which is a greater competence that the law has not attributed to the Prime Minister. It shall also be added that the suspension of an act by a Minister must be based on the violation that the act in question has

inflicted to the Constitution, laws or Decisions of the Council of Ministers, which means that the suspension of an act of a Minister remains relatively limited.

In the end of this analysis it is concluded that:

1. With regards to the appointment and dismissal of a minister, the Constitution of the Republic of Albania provides a procedure which requires not only the initiative of the Prime Minister, but also the agreement of the President and the vote of the Parliament. Such a procedure, in theory provides a guarantee to the Minister in relation to its stability in office, in case of conflict with the Prime Minister.

2. The Constitution has also granted to the Ministers a degree of autonomy in decision- making processes on issues under their responsibility and that are undertaken within the internal state policies approved by the Council of Ministers.

3. The legal inability of the Prime Minister to abrogate an act of the Minister results even from the provisions of the Council of Ministers Law, which attributes to the Prime Minister only the right to suspend an act by a Minister, the minister acts in contradiction with the Constitution and the laws of the country.

4. From the analysis and the conclusions reached herein, it is considered that the constitutional and legal framework in Albania, allows a certain level of autonomy to the Ministers in the exercise of their duties and powers.

5. On the other hand, taking into consideration the political leadership role of the Prime Minister on the formation of the Council of Ministers, his power in shaping the general state policies, his right to temporarily suspend an act of a Minister and the authority to resolve disagreements between ministers, and comparing it with the current political experience in Albania, we believe that it would be unusual for a case of technical nature to lead to a conflict between a Minister and the Prime Minister in case the latter would express the will to regulate in a specific form an issue, which is object of discussion.

Despite mentioned above it has to be emphasized the actual autonomy level of the activities of a minister from the authority of the Prime Minister depends on a number of other factors, such as the level of democracy in the country, the degree of democracy within the political parties, the degree of control and authority that the Prime Minister exercises on his Ministers, the political career path, the weight and the political importance of a particular minister as well as the emancipation of the society in general.

So from the definitions mentioned above results that each of the mentioned ministries shall perform the function of the share owner in the respective companies. Before this amendment, it was the Ministry of Economic Development, Tourism, Trade and Entrepreneurship which exercise the function of the shares owner (the public Authority, representing the state as the owner of the shares) in the three activities of Albpetrol company.

Furthermore the organization of the economic activity in Albania is regulated by Law no.9901 of date 14.04.2008 “On Entrepreneurs and Companies”. This Law defines and regulates the entrepreneurs status for the establishment and administration of entrepreneurs, the rights and obligations of the founders, partners and shareholders, the reorganization and liquidation of entrepreneurs. This law is obligatory even for the state companies.

Albgaz company in legal organisation point of view is subjecto to Law no. 9901, of date 14.04.2008, “On Entrepreneurs and companies”. So the role of the Ministry of Economic Development, Turism, Trade and Entrepreneurship as public Authority, representing the state as the owner of shares in relation to Albgaz company is the owner of 100% of shares. This ministry exercises to Albgaz company and performs the rights and obligations as any other private owner performs to the shares of a joint stock company established in Albania which operates based on Law no. 9901, of date 14.04.2008, “On Entrepreneurs and companies” as amended.

The Ministry of Economic Development, Turism, Trade and Entrepreneurship has the role of the only shareholder taking any decision in the competence of the General Assembly in a public limited company according to the provisions of Law no. 9901, of date 14.04.2008, “On Entrepreneurs and companies” as amended.

This role for Albpetrol company based on article 5, of Council of Minsiters Decision no. 848, of date 07.12.2016, “On the establishment of Albgaz company and defining the Public Authority representing the State as the owner of shares for Albpetrol and Albgaz companies”, is performed by the Ministry of Energy and Industry.

It results that Albpetrol and Albgaz companies have performed all the procedures to fulfill this obligation, thus fulfilling the independence obligation of Albgaz company, independence from generation or supply activities within the meaning of article 36 of the Law no.102/2015 “On Natural Gas Sector”.

Regarding the Supervisory Council on article 135 “The rights and obligations” of Law no. 9901, of date 14.04.2008, “On Entrepreneurs and companies” as amended it is defined that:

2. The general assembly takes the decisions for the following issues of the company:
 - a) defining the trading policies;
 - b) statute amendment;
 - c) the appoint and dismissal of the administration council members (one level system) and (two levels system) of supervisory council members,

On Albgaz company statute (article 17 the Supervisory Council), it is defined that:

The Supervisory Council is composed of 6 (six) members appointed from the General Assembly.

So the Ministry of Economic Development, Turism, Trade and Entrepreneurship appoints the members of Albgaz company Supervisory Council. It results that the Ministry of Economic

Development, Tourism, Trade and Entrepreneurship as the General Assembly of Albgaz company and implementing point 6 b), of Council of Ministers Decision no.848, of date 07.12.2016 “On establishing Albgaz company and defining the Public Authority representing the State as the owner of shares for Albpetrol and Albgaz companies where it is defined that:

The Ministry of Energy and Industry and the Ministry of Economic Development, Tourism, Trade and Entrepreneurship appoints the members of the supervisory councils for Albpetrol and Albgaz companies implementing the limitations defined on Law no. 102/2015, “On Natural Gas Sector”

The Ministry of Economic Development, Tourism, Trade and Entrepreneurship has approved with decision no. 56, of date 05.01.2017 the Supervisory Council for Albgaz company.

Also, the Ministry of Energy and Industry as the owner of Albpetrol company implementing point 6 b), of Council of Ministers Decision no. 848, of date 07.12.2016, “On the establishment of Albgaz company and defining the Public Authority representing the State as the owner of the shares for Albpetrol and Albgaz company”, has approved with order Protocol No.448, of date 29.12.2016, and Council of Ministers Decision, No.33, of date 21.12.2016, the members of the Supervisory Council for Albpetrol company

For the above mentioned, we conclude that the Supervisory Council members of Albgaz company, are appointed by MZHETTS, respecting the limitations imposed by article 54 of Law no. 102/2015, “On Natural Gas Sector”

- Based on article 36, points 2, 3, 4, 5, 6 it is defined that:

2. To ensure the independence of Albgaz the same person or persons shall not be entitled in the same time to:

a) directly or indirectly to exercise control over a licensed undertaking performing any of the functions of production or supply of natural gas and electricity, and to exercise control over decision making or exercise any right over the TSO or over the transmission system;

b) directly or indirectly to exercise control on decision making over the TSO or over the transmission system, and to exercise control on decision making or exercise any right over a licensee performing any of the functions of production or supply of natural gas and electricity;

c) to appoint members of the supervisory board, the administrative board or bodies legally representing the undertaking, of the TSO or the transmission system, and directly or indirectly to exercise control on decision making or exercise any right over a licensee performing any of the functions of production or supply of natural gas and electricity;

ç) to be a member of the supervisory board, the administrative board or bodies legally representing the licensee, to the licensees, performing any of the functions of production or supply and the TSO or the transmission system.

3. The restrictions stipulated in “a”, “b” and “c”, of point 2, of this article, shall be applicable in particular:

a) the power to exercise voting rights;

b) the power to appoint members of the supervisory board, the administrative board or bodies legally representing the licensee;

c) the holding of a majority share

4. The obligation set out in paragraph 2 of this article shall be deemed to be fulfilled in a situation where two or more undertakings which own transmission systems have created a joint venture which acts as one TSO in two or more countries. No other undertaking may be part of the joint venture, unless it has been designated as an independent TSO, and certified under the terms and conditions stipulated by the applicable legislation.

5. Where the person or persons referred to in paragraph 2 of this article is a public body controlled by the state, then the two separate public bodies that exercise control over the TSO or over the transmission system on the one hand, and over an licensee, that performs any of the functions of production or supply of natural gas and electricity on the other, shall be deemed not to be the same person or persons.

6. The Combined Operator which was part of a vertically integrated undertaking, in accordance of this law shall take the measures not to disclose or not to transfer commercially sensitive information in other units of the previous vertical integrated undertaking, which perform any of the supply and production activity of natural gas and electricity.

As evidenced above based on Council of Ministers Decision no. 848, of date 07.12.2016, “On the establishment of Albgaz company and defining the Public Authority representing the State as the owner of shares for Albpetrol and Albgaz companies”, results that the Ministry of Economic Development, Turism, Trade and Entrepreneurship is the holder of 100 % of Albgaz company shares, while the Ministry of Energy and Industry (MEI) is the holder of 100 % of Albpetrol company shares which respectively perform the natural gas generation activity and that of natural gas operator.

In this way, because of Albgaz company ownership unbundling, it results that this unbundling is performed according to the provisions of article 36, of Law no. 102/2015, “On Natural Gas Sector”, as well as in conformity with what is defined on article 8, letter “a”, of the rules “Approved with decision no. 100, of date 05.08.2015 and amended with decision no.129, of date 31.10.2015”, where it is defined that, above the criteria that should be fulfilled from the applicant to enable the decision-making and the certification from the Regulator is: a) The legal entity that owns the Transmission System Operator for natural gas should not have the right to control directly/indirectly the generation, distribution and supply activities or vice-versa;

On the ownership unbundling form of ERE regulation it is defined that: The legal entity that owns the Transmission System Operator for natural gas does not appoints, controls or is a member of the board or management structures in the generation, distribution, supply activities or vice versa, as well as does not have the right to vote or the right of the majority of shares;

This request of the regulation, is resolved within the provisions of Council of Ministers Decision no. 848, of date 07.12.2016, “On the establishment of Albgaz company and definition of the Public Authority representing the State as the owner of Albpetrol and Albgaz companies shares”, explained above in details.

On letter “q”, point 2, of article 8, of the regulation “Approved with decision no. 100, of date 05.08.2015 and amended with decision no. 129, of date 31.10.2015”, it is required the prevention to disclose the commercially sensitive information to energy companies.

Referring to the internal acts of the company (the Ethic Code of Albgaz company point 16.3 results that any employee of Albgaz company shall respect above all the preserve of confidential information even after leaving the company. Especially on article 16.3 of the Ethic Code it is defined as follows:

ALBGAZ company employees shall strictly implement the confidentiality principle to all its clients.

ALBGAZ company shall ensure the appropriate conditions to preserve and protect the clients information. Only if the client or the authorized representatives by him have the right to require and handle the information that belongs to him.

During the performance of his duties, the employees may have access to information, which is not open for the public, or that may be considered confidential. Here may be included the information that relates to the suppliers, the employers, with which ALBGAZ is connected, or has been connected in the past. It is important not to discuss such information with persons that does not belong to ALBGAZ company, with the written and electronic medias, or with other participants of the staff, that there is no need to be informed, unless authorised by their superior. You can not use confidential information for other purposes, othyer than work ones.

The confidential information (in electronic, written spoken or any other form) shall not come out of ALBGAZ premises. With the exception of the following cases:

- After the preliminary approval of the supervisor, if the employee wants to work with the information out of ALBGAZ premises, but only in the work interest. In such cases, the employee shall undertake all the necessary measures that no third person has access to this information;
- In other cases, only after the prior written approval by an ALBGAZ company manager.

When the employee leaves his/her workplace by the end of the day or during the day, he/she shall ensure that no confidential information is left in the workplace or in another easily accessible place. All to documents containing confidential information must be locked and the computer shall be switched down or must be protected with a password. Also, during the conversations with the clients at the workplace, all the confidential information, including the information at the computer, shall not be visible. The confidential information may be given to the parties only after the prior approval by an ALBGAZ company manager. The employees may give confidential information to their working colleagues only when this is in the interest of the Company.

The responsibility for not giving confidential information is valid even after the dismissal of the employee.

The issue of confidential information from the employee shall be accompanied with **disciplinary measures**, which may bring **to his/her dismissal**.

Also on the individual work contract on article 16 it is provided that

- 16.1 The employee is prohibited to disclose the confidential information from the institution where he works or goes temporarily, without the prior written authorisation from his superior.
- 16.2 The employee is prohibited to disclose the information which may affect the interests of Albgaz company, or any other company or person, for he became aware during the exercise of his duty or due to it.
- 16.3 Where applicable, the Employer may require from one or more Employees to sign the Confidentiality Agreement. The Employee is obliged to sign the Confidentiality Agreement when this is required from the Employer.
- 16.4 Where applicable the Employer may require from one or more Employees to sign a Conflict of Interest Declaration by which the Employee declares that he does not have any direct or indirect, real or seeming interest and that comes or may come in conflict with his position in Albgaz company and with the interests of the latter. The employee is obliged to sign the Conflict of Interest Declaration when required from the Employer.

Also referring to article 41, of Law no. 102/2015, “On natural gas sector”, Albgaz company has the obligation to preserve the confidentiality of any commercial sensitive information. On this article it is defined that TSO:

“Preserves the confidentiality of any commercial sensitive information.”

The above required information from the law is reflected in the internal acts of Albgaz company, explained in details on the above paragraph.

- On article 80, point 4, letter “c”, it is required: Having available the necessary financial, technical, physical and human resources to the Transmission System Operator for natural gas to realise its activity. Regarding this criteria of the law in analysing the documentation submitted by the applicant it results that:

Although Albgaz company is a just established one, it has immediately started the work for certification and licensing. Waiting ERE decision for the transmission tariff, Albgaz company has found clients with whom are being prepared the cooperation agreements. With the approval of the tariff by ERE, Albgaz company shall be able to begin gas transmission and realise the cover of the expenses for 2017. The Albanian Parliament, approved Law no. 102/2015 “On Natural Gas Sector” which marked an important step for all of the Albanian legislation in general as an evidence of the approximation with the european legislation, but it has a special importance for natural gas sector, regarding its organization and operation. This law reflects the provisions of the third european legislative

package in electricity field and as a consequence sets the new criteria for the organization and operation of the power sector companies and natural gas market. An important place at these legal provisions is held by Albgaz company, as the natural gas sector company that is obliged to guarantee the security of all Albanian natural gas system. For this reason Albgaz company shall ensure its independence from other natural gas system companies by the certification process, transparency in the transmission capacities allocation process, ensuring the gas for the losses and ancillary services in the gas market by competitive and transparent procedures, ensuring the balance of the system by organizing and operating the imbalances market, ensuring transparent tariffs for the access in the transmission grid, active participation in the organization and operation of the natural gas market. It is clear that the new law, as well as the aim for full rights membership at ENTSO-G, sets Albgaz company facing many obligations and as consequence before a new perspective, which require the adoption of Albgaz company with an European gas transmission company. That means Albgaz company development not only not only as a company that meets all the technical and legal European criteria, but also as a full human resources that make it possible the fulfillment of these criteria. Even the organizational chart of Albgaz company is designated taking into consideration the above mentioned, with some directorates that perform administrative functions depending on the administrator of the company and the three directorates that are directly related with the fulfillment of above mentioned legal objectives and concretely:

Referring to the approved organisational chart of Albgaz company results that are contracted 550 employees, based on individual work contract, from Albgaz company.

I. TRADING DIRECTOR

The director whose tasks are to:

- Draft and submit operational, financial and strategy plans relating to the commercial activity of Albgaz company.
- Communicate with the Administrator regarding commercial administration issues of the company
- Supervises the commercial activity of the company.
- Follows the natural gas market in Albania, in the Region and in the European Union
- Propozon masa dhe ndërhyrje konkrete për rregullat e tregut të gazit natyror.
- Proposes measures and concretely intervenes for the natural gas market rules.

- Communicates and proposes amendments for the commercial plan of the company
- Reports the activity to the Administrator of the company
- Any other task changed from the Administrator.

II. TECHNICAL DIRECTORY

The Main Tasks and Responsibilities:

- Focusing on Gas balances in the Transmission and Distribution networks or in the Storages, calculates the respective Technical Losses by creating a clear and transparent picture for the technical losses situation in the transmission and distribution network or in the storage of Albgaz company.
- Contributes to technical and managerial development focusing not only to reduce the technical losses but also economic viability and the return of these investments. So by this management approach, shall serve to the company Administrator to guide him as precisely as possible on technical priorities and the economic efficiency of all the investments that will be needed in transmission, distribution networks and the storage one of Albgaz company.
- Pursues, implements, controls and evidences the decisions of the Administrator and of the science Council and takes the necessary technical-organisative measures for implementing them.
- Shall continuously contribute to the approval and control of the standards and the approval of technical specifications of the equipments and materials that shall be introduced in Albgaz network increasing its efficiency and reducing the operational costs.
- Contributes in the standardisation to establish facilities in transmission, distribution and natural gas storage operations and offering the services, by ensuring the performance measures that shall:
- Assist Albgaz managers to better understand the strong points of their company and the company weaknesses, efforts to make direct improvements.
- Assist the public officials, the investors, credit institutions and donation organisations to make capital expenditures and technical assistance programs for Albgaz which are connected with the performance.
- Contribute to the design, planification and development of Albgaz asset.
- By the technical and maintenance service sector of the transmission network which is on its dependence shall contribute that the operational actions of performing the maintenance and utilisation of the network shall be realised not only according to technical conditions of gaz, but even with economic efficiency, that means lowest costs
- Management of unplanned interruptions because of technical reasons or abuses
- Management of the material base even in low levels in the terrain like operative and operational groups.
- Management the whole range of investments, network reconstruction, capital overhauls as

well as operational actions.

- Management of the emergency situations that may be created on the network because of a force majeure, natural disasters or abusive interventions from natural persons, different state or private entities.
- Management of the optimisation process for the technical regime of the network, makes the gas balance in the distribution network and calculates the losses.
- Agree about the objectives with the Administrator of the company and preoccupies to deliver at the directories that he covers and above all their follow and realisation.
- Defines and follows the technical objectives for the development of the activities that he has by programing and planification regarding the utilisation and maintenance of the network.
- Pursues the performance and the organisational efficiency according to the strategic objectives by appropriate incentives regarding the organisation of the work, the coordination and their control.
- Analyses serious breakdowns and work accidents, issues technical conclusions regarding them and proposes to the Administrator to take the necessary measures to minimise them and not occur in the future.
- Answers in highest standards to implement the technical rules and the work security of the employees, citizens of the community where Albgaz company performs its activity.

Proposes the necessary measures to implement the obligations deriving from the law for environment protection.

III. FINANCE, ACCOUNTING AND PROGRAMING DIRECTORY

The purpose of the ECONOMIC DIRECTORY at Albgaz company is to achieve effectiveness in managing the financial functions.

The financial functions of Albgaz company include:

- accounting policies and procedures,
- the account-taking and report of the systems,
- planification and foresee,
- budgetary and financial practices and procedures as well as:
- supervisory responsibilities.

The purpose for better financial management is to ensure that the company shall operate as a financially sustainable entity .

IV. PROJECTS AND AGREEMENTS DIRECTORY

The main Tasks and Responsibilities:

- Through the summary of a series of tasks and processes aims to develop the opportunities of increasing the business activity within and outside the organization;

- Establishes long-term values of the company with the customers, the relations with the interest groups and with the markets;
- Develop the tasks and processes regarding the analytical preparations of the opportunities for the potential increase of the company businesses;
- Support and monitor the implementation of increasing opportunities;
- The establishing, construction of managing the strategy relations
- The cooperation and the share with the others the expertise, technology etc to expand the capacities to identify, research, analyse and to bring in the market effective businesses and new products;
- Focus on the development of the projects by the finances, technologies, products;
- Manages all projects undertaken by the company to achieve its strategy;
- Analyses the results of the projects and gives the respective conclusions and recommendations for the Administrator and the management of the company;
- Undertakes incentives and proposes new projects for the company to achieve strategic objectives of the company;
- Analyses and accesses the prepared reports and reports the results periodically to the supervisors
- Responds for the implementation of the tasks and engagements of Albgaz structures within the implementation of the projects.
- Programms, implements, monitors and follown the on time and qualitative implementation of the activities connected with the management of the projects.
- Monitors the implementation of the project to use their efficiency.
- Defines the works that shall be completed during the project's lifecycle.
- During the planification process, by the outputs it is required the capture and assign of the necessary works to conclude the project.
- By the controlling and monitoring process it is enabled 'the scope creep', the documentation, the pursue and approval/disapproval of the projects amendments.
- By the conclusion process, through the audit it is concluded for the projects findings and are accessed the results against the original plan.
- Are clearly defined the fields of the product and of the project.
- Defining the projects field regarding the requirements of the business/the company, the requests of the project and of the findings.
- Defining the field of the product regarding the technology requirements, the requirements of security and performance.

V. SUPPORTING SERVICES DIRECTORY

The main Tasks and Responsibilities:

- Manages the services that support the realization of the company activities
- Manages the structures of the company with legal opinions, pursues and realizes court representation in the court processes where the company is involved.
- Supports the other structures with supporting services (vehicles, maintenance services, IT

services, operational services etc.)

- Manages and plans the Human Resources of the company
- Manages the procurement processes according to the legislation in force
- Authorizes the move of the base material by controlling the efficiency of using it from the supporting structures.

Apart the separation regarding the human resources of Albpetrol and Albgaz companies it results that this separation is concretized even in the physical, financial structures and in the technical level. From the above mentioned Albgaz headquarters referring to Article 2 of the company statute is in Tirana address: Municipality Unit No.2, “Bulevardi Zhan Dark”, No.3, behind the Foreign Affairs Ministry and does not have any relation with Albpetrol company offices.

The official website of Albgaz company is : www.albgaz.al and the server is located on INSTAT building : Municipality Unit No.2, “Bulevardi Zhan Dark”, No.3, behind the Foreign Affairs Ministry.

The bank accounts are also separated from Albpetrol company referring to the copy of the bank document IBAN at CREDINS Bank deposited at ERE.

Law no. 102/2015, “On natural gas sector», has made some foresees which include and compose Albgaz company obligation regarding the draft of a 10-year development plan, which shall compose, the approval procedure, the review procedure, the obligation of reporting these plans at ERE.

Albgaz company owns assets according to the attached documentation which divide the transmission network as follows:

No	Magistrals	Length km	Diameter Φ inc	Projected pressure bar	Accepted pressure bar	Actual pressure	Projected debt Nm3/days	Accepted debt Nm3/days	Actual Debt Nm3/days
1	Divjake - Bubullime	23	12-8-4	40	8	4-4.5	2300000	87000	5000
2	Bubullime-Fier	14	12	40	8	4.5	2300000	87000	5000
3	Povelce - Fier	17.3	9.1	40	10	4.5	1200000	11500	3000

4	Frakull -Fier	7	6	40	10	3-4.5	760000	17700	5000
5	Cakran- ballsh	5.5	10	40	15	3-4.5	300000	40000	5000
6	Delvine- Ballsh	101	6	40	15	6.5	110000	63000	18000- 20000
7	Ballsh Fier	24	12	40	10	4	2900000	28000	12000
8	Ballsh – Elbasan	84	12	40	20	-	1700000	-	Damaged

- With the establishment of Albgaz company the natural gas transmission assets transferred from Albpetrol company to Albgaz company. The value of these assets is estimated 359 068 000 (three hundred fifty nine million and sixty eight thousand) ALL. The transfer of the assets is made based on Council of Ministers Decision no.848 of date 07.12.2016 “On the establishment of Albgaz company and defining the public authority representing the state as the owner of shares for Albpetrol and Albgaz companies”

The evaluation of the assets transferred to Albgaz is performed by an independent accounting expert which carries out all the necessary actions according to the books and the registers set at disposal by Albpetrol company. These assets are now accounted with the registers of Albgaz company.

Albgaz company has an essential interest to perform the factual evidence of the assets on the terrain and perform the registration of the unregistered assets at the respective mortgage office, because performing this process Albgaz company shall increase its value and clear the registers from unnecessary assets for its operations

For the above mentioned, the Administrator (CEO) of Albgaz company has issued an internal order no. 02, of date 28/02/2017 where he requires:

- 1- To immediately begin the procedure for the factual evidence of Albgaz company assets and their registration in the mortgage offices.
- 2- To establish the working group with 8 high level management employees to manage the process.
- 3- The working group is charged with the duties as follows:
 - a) In cooperation with the Technical Directory, Projects and Agreements Directory and Supportin Services Directory, shall be evidenced the available data and the factual

examination on the terrain the length of the transmission and distribution lines of natural gas, Albgaz assets and the statute of their registration in the mortgage registers.

- b) Based on the data received from the activity described on point a), shall define the number of the working days and the employees necessary for the factual verification of the assets on the terrain according to the transmission and distribution lines and prepare a concrete plan for the registration of the assets mortgaged at the respective mortgage registers.

- 4- The Directory of Supporting Services and the Economy Directory in cooperation with the working group shall calculate the needs for the logistic equipments and cover the costs for the actual verification of the assets on the terrain and their registration in the respective mortgage registers.

The final deadline for the process of evidencing the assets on the terrain is set the date September 30 2017.

The current network in the ownership of Albgaz company includes these deteriorated transmission systems. Albgaz company has established a working group to access this system and improve it. The results of these working groups and other foresees in Gas Master Plan and specific projects of this master plan compose the basis for the 10 year development plan of Albgaz company. Article 46, of Law no. 102/2015, “On Natural Gas Sector ” – network development and investment decisions.

1. The Combined Operator, within 12 months from entering into force of this law, shall submit to ERE a ten-year transmission network development plan based on supply and demand, which is being reviewed by 31st October of the previous year, a after having consulted all the relevant parties and taking into account existing and planned forecast of supply and demand.. The transmission network development plan shall contain efficient measures in order to guarantee the adequacy of the network and security of supply.

2. The network development plan shall:

- a) take into account the information for the natural gas market participants, as well as information on the main transmission infrastructure that needs to be built or upgraded over the next 10 (ten) years;

- b) contain all the investments already approved and identify new investments which have to be executed in the next three years;

- c) provide for a time frame for all investment projects.

3. When elaborating the ten-year network development plan, the TSO shall make reasonable assumptions about the production, supply, consumption and exchanges of natural gas with other countries, taking into account investment plans for surrounding networks as well as investment plan for the storage facilities and LNG re-gasification.

4. The ERE shall consult all actual or potential system users regarding the ten-year network development plan in an open and transparent manner. The ERE shall publish the result of the consultation process, in particular possible needs for investments.
5. ERE shall examine whether the ten-year network development plan, if it finds that, not all investment needs are identified during the consultation process, may require from the Combined Operator fulfill and/or change its ten-year network development plan.
6. ERE shall approve, monitor and evaluate the implementation of the ten-year network development plan
7. When ERE identifies that the TSO, has not performed for three years a forecasted investment in accordance with the 10 year plan, and considers that such investment is necessary and may be financed without hindering the normal operation of the network, shall request from TSO the following measures:
 - a) execute the investments in question;
 - b) organise a competitive procedure to execute the investment in question open to any investor;
 - c) to accept a capital increase to finance the necessary investments and allow independent investors to participate in the capital of the company.
8. Where ERE takes the measures according to letter b) point 7 of this article, it may oblige the Transmission System Operator to implement one or more of the following options:
 - a) financing by any third party;
 - b) construction by any third party;
 - c) building the new concerned assets itself within a reasonable deadline;
 - ç) operating the new assets after construction.
9. Albgaz shall provide the investors with all information needed to realise the investments, and shall generally make its best efforts to facilitate the implementation of the investment project. The relevant financial arrangements shall be subject to approval by the ERE.
10. Where ERE has made use of its powers under point 7 and 8 of this article, shall take the opinion of the ministry responsible for energy.
11. ERE take measures that the investment costs are covered by the relevant fees and unrealized investments to be taken into account during the next year tariff approval.
12. ERE drafts and approves a regulation on the procedures for the submission and approval of investment plans

Obligations of the Combined Operator are defined on articles 41, 53, 61, and 69.

Specifically Article 41 provides:

1. ALBGAZ has these main responsibilities:

- a) shall construct, own, operate, maintain and develop under economic conditions the secure, reliable and efficient natural gas transmission system to secure market, as well as to ensure sufficient capacity to meet reasonable demand for transmission of natural gas in a defined territory and adequate means to meet service obligations. ALBGAZ, while carrying out its duties and fulfilling its tasks, respects the secure requirements in the job site in the transport system and the environment protection in accordance with the legislation in force;
- b) ensures the natural gas transmission service, in conformity with the license conditions and ERE rules;
- c) shall ensure the balancing of the system in accordance with objective principles, transparent and non-discriminative in accordance with balance regulations. Prices for the provision of the balancing-related services shall be established pursuant to the methodology adopted by the ERE.
- ç) shall conduct the transmission system services in transparent, non-discriminative, based on the principle of the lower cost and lower environmental impact.
- d) shall build sufficient cross-border capacity to integrate the natural gas transmission system of natural gas in Albania with such system of other EU Member States and Energy Community contracting parties accommodating all economically reasonable and technically feasible demands for capacity and taking into account security of gas supply.
- dh) provides to any other transmission system operators, Distribution System Operator, storage system operator, LNG operator and neighbouring Albgaz or other licensed natural gas undertaking with sufficient information to ensure inter-operability of the system, and to ensure that the transport and storage of natural gas may take place in a manner compatible with the secure and efficient operation of the interconnected system.
- e) provides system users with detailed information in a meaningful, quantifiably clear and easily accessible way regarding services offered, conditions for service, and technical information necessary for network users to gain effective network access, including, but not limited to technical, contracted and available capacities, consistent with confidential information exemptions as approved by the ERE;
- ë) shall procure the energy it uses for the carrying out of its functions according to transparent, non-discriminatory and market based procedures
- f) shall keep at the disposal of the national authorities, all information referred to in article 48 of this law for a period of 5 (five) years. This information should be at the disposal of the Energy Community Secretariat as well.
- g) shall take reasonable steps to allow capacity rights to be freely tradable and to facilitate such trade in a transparent and non-discriminatory manner. ALBGAZ shall also develop harmonised transport contracts and procedures on the primary market to facilitate secondary trade of capacity and recognise the transfer of primary capacity rights where notified by system users. These harmonised contracts and procedures shall be notified to the ERE.
- gj) preserve the confidentiality of any sensitive commercial information.

2. ALBGAZ operates in accordance with minimum technical standards adopted by the ministry, on maintenance, development, technical inspection system of natural gas transmission and interconnection capacity.

On the analysis of Transmission System Operator for natural gas powers to issue and manage third party access, as well as the operation, maintenance and development of the system to fulfill long term request through planning the investments, the construction and commission of the infrastructure including the authorisation procedure it is viewed that:

On article 42, of Law no. 102/2015, “On Natural Gas Sector”, the Transmission System Operator shall ensure the connection with the transmission network on non-discriminatory conditions.

1. OST shall provide an unrestricted access to the transmission system in line with the terms and conditions laid down in the Transmission Grid Code. In this regard, the TSO shall:

- a) ensure that it offers its services on a non-discriminatory bases to all network users;
- b) provide both firm and interruptible third-party access services. The price of interruptible capacity shall reflect the probability of interruption;
- c) offer to network users both long and short-term services.

2. In regard to subparagraph “a” of point 1 of this article, where the TSO offers the same service to different customers, it shall do so under equivalent contractual terms and conditions, either using harmonised transport contracts and/or pursuant to the Transmission Grid Code approved by the ERE.

3. The TSO shall publish the terms and conditions approved by ERE, including rules and tariffs, for the provision of third party access to the transmission system. These terms and conditions shall apply in non-discriminative manner for all the customers.

4. The third-party access services may be granted subject to appropriate guarantees from network users with respect to the creditworthiness of such users. Such guarantees shall not constitute undue market-entry barriers and shall be non-discriminatory, transparent and proportionate.

5. Transport contracts signed with non-standard start dates or with a shorter duration than a standard annual transport contract shall not result in arbitrarily higher or lower tariffs that do not reflect the market value of the service, in accordance with the principles laid down in paragraph 1 of article 33 of this law.

6. The conclusion of long-term contracts shall be allowed in so far as they comply with the competition rules stipulated in the applicable laws, as required by the Energy Community law.

7. TSO shall, if necessary for the purpose of carrying out its functions shall conclude agreements and/or other collaborating conditions for having access to the network of other transmission system operators of neighbouring countries.

Regarding the support and information from the owner of the Transmission System Operator for natural gas to fulfill the obligations; financing or approval of the investment funding approved by the regulator; to cover the liabilities for network assets; providing the guarantees to facilitate /enable the financing of network expansion; results that according to Law no. 9901, of date 14.4.2008, “On entrepreneurs and companies”, article 135, point 2, letters “dh”, “e”, “ë”, “f”, “g”...:

The general assembly of the company takes decisions for the following issues of the company:

- dh) approval of annual financial statements and the reports for the performance of the activity;
- e) the distribution of annual earnings;
- ë) increase or reduction of the registered capital;
- f) division of the shares and their cancellation;
- g) amendments on the rights, related to the actions for specific types of categories;

In conformity with the provisions of ALBGAZ company Statute, article 13, the General Assembly (which means ALBGAS company owner), takes any decision that are on its competence according to the provisions of law No. 9901 of date 14.04.2008 “On entrepreneurs and companies”.

The above approvals result to be approved according to:

- Official letter protocol No. 536/1 of date 05.02.2016 of MZHETTS Minister “The Approval of the economic program of the company for 2016

As explained until now results that Albgaz has all the necessary support from its owner, to fulfill the obligations, financing and approval of the financing for the investments approved from the regulator; cover the responsibilities for the grid assets; ensuring to facilitate /enable the financing to extend the grid;

- The official letter mentioned above is a document that support this support.

According to the Questionnaire included on the abovementioned regulation approved by ERE, with decision no. 100, of date 05.08.2015 and amended with decision no. 129, of date 31.10.2015, “Rules for the certification of the Combined Operator for natural gas” it is required to have the necessary assets in the ownership of the Transmission System Operator for natural

gas, the equipments, staff, as well as a commercial identity (brand) clear and distinguished from other operators;

Regarding this request of the regulation in conformity with what is submitted from Albgaz company in the certification application results that Albgaz company owns the pipelines as follows:

No	Magistrals	Length in km	Diameter Φ inc	Projected pressure bar	Accepted Pressure bar	Actual Pressure bar	Projected Debt Nm ³ /days	Accepted debt Nm ³ /days	Actual Debt Nm ³ /days
1	Divjake - Bubullime	23	12-8-4	40	8	4-4.5	2300000	87000	5000
2	Bubullime- Fier	14	12	40	8	4.5	2300000	87000	5000
3	Povelce -Fier	17.3	9.1	40	10	4.5	1200000	11500	3000
4	Frakull - Fier	7	6	40	10	3-4.5	760000	17700	5000
5	Cakranballsh	5.5	10	40	15	3-4.5	300000	40000	5000
6	Delvine-Ballsh	101	6	40	15	6.5	110000	63000	18000-20000
7	Ballsh Fier	24	12	40	10	4	2900000	28000	12000
8	Ballsh – Elbasan	84	12	40	20	-	1700000	-	Damaged

and the assets according to Council of Ministers Decision no. 848.

The initial capital for the establishment of “Albgaz” company shall be 359 068 000 (three hundred fifty-nine million and sixty-eight thousand) ALL. This value of the initial capital represents the value with which shall be reduced the capital of “Albpetrol” company, after the separation of the

gas unit in conformity with order no. 550/3, of date 05.05.2016, of the Minister of Economic Development, Tourism, Trade and Entrepreneurship, “On regulating Albpetrol company capital.”

Albgaz company performs its activity in the framework of the Regulations, guidelines, manuals relating with the organization, operation, the activity or subcontracting the services, that include: a) the statute b) regulation for Albgaz operation c) Ethics Code d) job descriptions e) employment contracts f) trading contracts g) technical rules of gas.

It results that Albgaz and Albpetrol companies have their logos and naming separated and clearly distinct from each other. Each of the companies has its unique identification number (VAT & NUIS number) in the system.

The organisation according to the legal forms specified in Article 1 of the Directive 68/151/EEC and the legal framework in force;

The name of “Albgaz” company, Identification Number (NIPT) L71306034U, 100% state owned capital with the only shareholder the Ministry of Economic Development, Tourism, Trade and Entrepreneurship. The capital is 359 068 000 (three hundred fifty-nine million sixty-eight thousand) ALL, number of shares 359,068, nominal value 1 000.

IT systems, the buildings where is exercised the activity of Albgaz company security and access systems cannot be used together with the generation or supply vertically integrated enterprises or to contract the same providers for these services

According to the Questionnaire on the regulation approved with ERE decision no. 100, of date 05.08.2015 and amended with decision no. 129, of date 31.10.2015 the rules “On the certification of the Combined Operator for natural gas ”

The configuration and power of the Supervisory Council;

In conformity with the submitted documentation according to article 17 of Albgaz company statute

1 The Supervisory Council is composed of 6 (six) members, which are appointed by the General Assembly.

List of the collegial bodies of the company (the supervisory council and/or administrative board) that applies and for electricity activities results: the Members of the Supervisory Council of Albaz company, according to Ministry of Economic Development, Tourism, Trade and Entrepreneurship order, reflected on National Business Center extract are defined the members of the Supervisory Council.

In conformity with the provisions of Articles 17 of Albaz company Statute, the Supervisory Council of Albaz company, has these powers: The Supervisory Council appoints the administrator of the company.

The Supervisory council in the quality of the supervisory body, performs the implementation of trade Policies of the company and their conformity with the law and the statute. He has the power to:

- 1 The Supervisory Council is composed of 6 (six) members, which are appointed by the General Assembly.
- 17.2 The members of the Supervisory Council keep their positions for a period of three years, by the end of which they may be re-appointed.
- 17.3 The Members of the Supervisory Council are individuals, which shall be independent and different from the administrators of the company, administrators of other companies from the same group, and persons connected with the above persons. The independent members of the Supervisory Council are assessed the persons that does not have conflicts of interest or membership conflicts according to the definitions of point 3 article 13 and point 3 article 167 of Law **on Entrepreneurs**. Any appointment made in the contrary with these provisions, is void. Members of the Supervisory Council are obliged to immediately inform the company for any conflict of interest or conflict of membership in the councils of other companies.
- 17.4 Any vacant position in the Supervisory Council as consequence of resignation, dismissal, disability or death, shall be substituted by a new member appointed with the decision of the General Assembly. The new member shall remain into office until the end of the term for the substituted member.
- 17.5 The Supervisory Council elects the Chairman between its members and the secretary of the Supervisory Council.
- 17.6 Except what is defined in this Article, the members of the Supervisory Council shall fulfill the conditions, obligations, responsibilities and the criteria provided on articles 163 from (1) to (3) and 167 of the Law on Entrepreneurs.

In conformity with the provisions of article 16 of Albaz company Statute the Supervisory Council of Albaz, has these powers:

- a. Call the General Assembly when considered necessary for the interests of the company and immediately after the verification of the circumstances provided on points 3, 4 and 5 of article 136 of Law on Entrepreneurs;

- b. Assure that the company implements the implemented laws and standards of accounting;
- c. Reviews the books, documents and assets of the company;
- d. Ensure that the annual accounting statement and the performance report of the Company is regularly prepared by the Administrator, and he shall fulfill any other legal or statute obligation for the report or the publication. These documents shall be approved and signed by all members of the Supervisory Council, to be submitted at the General Assembly together with a report of the Supervisory Council regarding the reasons for the approval and a description how is monitored the administration during the financial year, and
- e. Ensure that the audit of the books and records shall be carried out at least every year from an independent accounting expert and that the audit report addressed to the General Assembly is available to any member of the Supervisory Council. The report of the Council according to the previous letter (d) shall also contain the opinion of the Council on the audit report.
- f. Establish permanent or special committees, for different operational issues of the company;
- g. Establish the special committee for the internal audit, which is composed of not less than 3 members of the Supervisory Council;
- h. Require information and initiate accountability processes for any case it deems appropriate regarding the decisions taken by the Administrator, the activity of the company, its other divisions or departments.
- i. Approve the organisational chart and the structure of the company staff, as well as their change;
- j. Appoint and dismiss the Administrator of the company.
- k. Approve the structure of the internal audit of the directory, for the company and appoint the directory and its members.
- l. Approve the annual investment plan, including the agreements regarding the cross-border interconnection capacities, the transmission, storage, plants or natural gas distribution service.
- m. Approve the connection of loan or credit agreements (taken or received), or other establishments (or agreements to be established) of a company debt up to the amount 10.000.000 EUR;
- n. Give prior approval for the purchase of real estate assets above the amount 100.000 Eur.
- o. Prior approve the sale or any available form of the real estate assets of the

company in the amount from 50.000 to 100.000 EUR, and to require the approval of the Assembly for amounts bigger than 100.000 EUR.

- p. Prior approve the sale of movable assets if the amount of an agreement is from 50.000 to 100.000 EUR, or if the cumulative amount of these contracts is from 250.000 to 500.000 EUR within the financial year.
- q. Prior approve the amendments on the financial plan of the company on the request of the Administrator and take the approval of the Assembly for the amendments higher than 25% (twenty five percent) of the initial value for the financial plan of the operating year.
- r. Prior approve the amendments of the financial plan for the company with the request of the Administrator when there is a change of the initial value less than 25% (twenty five percent).
- s. Prior approve the proposals of the Administrator for donations, sponsorship, financing of social, cultural and charity projects.

According to the questionnaire on the regulation approved withh ERE decision no. 100, of date 05.08.2015 and amended with decision no. 129, of date 31.10.2015 for the rules “On the certification of the Combined Operator for natural gas”

The independence of the management and staff of the Transmission System Operator for natural gas based on the powers of the Albgaz company Supervisory Board in relation to recruitment, compensation and termination of the agreements for the executive managers or the administration after informing the regulator on the procedures governing the above issues and if the regulator has not submitted any objection;

In conformity with the provisions of Albgaz company Statute (article 16, point j), the Supervisory Council of Albgaz company appoints the administrator of the company. Based on Law no. 9901, of date 14.04.2008, “On Entrepreneurs and companies, as amended, Law no. 7961, of date 12.07.1995, “Labor Code of the Republic of Albania”, Council of Ministers Decision no. 642, of date 11.10.2005, “For the supervisory councils of the state public limited companies”, the guideline no. 318, of date 08.04.2009, “On the appointment, operation and reward of the Supervisory Councils of state public limited companies”, connected between the Supervisory Council and the administrator, the company administration contract.

Actually as the result of the amendment made on Law No. 8/2016 “For an addition and amendment on Law no.7926, of date 20.04.1995, “On transforming the state companies in trading companies”, as amended, article 1, by the end of the first sentence it is added the

sentence as follows, where it is provided that: “Exercising the right of the owner representative for the state own, including the right of appointing the members of the supervisory councils, in natural gas companies is made in conformity with the definitions of Law no. 102/2015 “On Natural Gas Sector.”.

The company has submitted at ERE the declarations of the appointed members of the supervisory council for the company, signed on 18.02.2017 where are clearly expressed regarding the complete lack of any form of connection, interest or influence with other trading companies that exercise the generation, distribution and/or natural gas supply activity.

With Albgaz company Supervisory Council decision no. 2 of date 05.01.2017, “On the appointment of Albgaz company administrator ” and the financial agreements it is appointed the administrator and it is signed the administration agreement for the company.

According to the declaration submitted for the certification process, it is declared from the administrator that he is aware of the requirements and prohibitions defined on article 36 of Law no. 102/2015, “On natural gas sector” and articles 8 and 9, of the regulation approved with ERE decision no. 100, of date 05.08.2015 and amended with decision no. 129, of date 31.10.2015 the rules “For the certification of the Combined Operator for natural gas” and in conformity with them declares that he does not participate in power and hydrocarbon activities that are related with generation, distribution and/or supply with natural gas or electricity. This declaration is completed even by the directors of the company where all of them have declared that they do not participate in power company activities regarding generation, distribution and/or natural gas supply.

Regarding the termination of the work contract there are provided the circumstances for the work contract termination. Regarding all Albgaz company employees results that the employment is made according to Albgaz company employment criteria, they are proposed by the administrator of the company and are approved by its Supervisory Council.

The standard employment contract based on Law no. 7961, of date 12.07.1995, “The Labor Code of the Republic of Albania the legislation for social securities, the legislation on income tax, the acts for the operation of the company where they enter, the regulation for the operation of the company, the work rules and the technical security rules and the Ethic Code. The payment definition is made according to the payment structure and the guideline on their application at the Albgaz company proposed by the administrator of the company and approved by the Supervisory Council and the Shares Assembly of the company. The employee shall perform in a honest, qualitative way and effectively all the obligations given by the superiors, shall develop and protect the employers interest and avoid anything that may put them into risk. Some of the rights and obligations of the

employees are: Need to maintain a high discipline at work in any direction and shall maintain and preserve the confidentiality for any information or regarding the Employer, is fully aware and agrees that during the employment he shall consider and implement all the standards, policies procedures and rules for the operation or internal ones which are into force or may be set by the Employer, etc.

Regarding the termination of the work relations in a standard individual contract, are provided the respective circumstances and procedure on “The disciplinary measures and the Settle of the Contract”. These procedures guarantee that for the settling of the employment contract the employer respects and implements all the rules and procedures provided in the albanian labor legislation. On the ethic code there are clearly defined the principles of exercising the duty by Albgaz company employee which above all include the obligation of employee to protect the legitimate interests of Albgaz company; in performing its obligations in a honest and efficient way taking into consideration only the interest of the Company, respecting the directors, other employees, the health and work security, not to benefit in an unfair way through manipulation, concealment and information abusal in the damage of a person or any other company; not to claim or accept from anyone as a reward in monetary value or valuable items to perform its duty; to protect the confidentiality of information even when leaving the Company, according to the legal definitions;

There are also defined the conditions for the conflict of interest for TSO company employee, foreign activities of Albgaz company, the use and spread of confidential information. Regarding the conflict of interest of the employee on article 1.8 “Conflict of Interest” of Albgaz company Ethic Code it is provided what shall be considered a conflict, which are the cases and how will be handled. Moreover :

Albgaz company employees shall not create such situations where the service to the client is conflict with the service offered to another client, or the interest of the employer is in conflict with the service to the client.

Albgaz company employees shall ensure that their personal interest is not in conflict with the obligations to Albgaz company or the obligations of Albgaz to the clients. If you doubt about a circumstance that may create conflict of interest, you should consult with your director or the Department Directory before undertaking further actions.

The employee shall declare by writing to the Human Resources Directory the nature and the level of material interest and the material benefit relations when:

- a) he is a party in a proposed or terminated contract or a material benefit agreement;
and
- b) he has material benefit or is in a benefit agreement with any person that is party in a concluded or proposed contract with Albgaz company.

If the employee has private business relations and personal relations with Albgaz company clients, other suppliers that make business with Albgaz company, he may not ask special favors referring to its relation with Albgaz company.

- To prevent the conflict of interest and the risk to use the wrong information, it is necessary that the employees are consulted with the manager of the company and the responsible authority to prevent Albgaz company conflict of interest.

- These cases are handled by Law no. 9367, of date 07.04.2005 “On preventing the conflict of interest in exercising public functions” (as amended); law no. 9049, of date 10.04.2003 “On the declaration and control of the assets, financial obligations of the elected persons and some public employees” (as amended), the respective secondary legislation issued for their implementation and the internal regulation of the Company.

These definitions are provided on article 16.8 “Conflict of interest” of the Ethic Code of Albgaz company.

Also regarding the external activities of Albgaz employees on article 16.20 of the Ethic Code it is provided that:

An Albgaz employee may undertake a public service, which does not doubt about the independent character of Albgaz company, as for example the service in an educational, municipal, charity or a boarding council of a university.

Regarding the direct/indirect financial benefit, from vertically integrated undertakings, up to this moment, the only provisions are those defined on the standard employment contract and the Ethic Code of Albgaz company. Moreover, former integrated undertakings in the Albanian hydrocarbon system are state companies where 100% of the shares are owned by the state, so the benefit opportunity as result of the ownership is zero. Also regarding the benefit from the employment opportunity even this is impossible in the current conditions, as the result of the fact that they are state companies,

the work organization way, the working hours are referred to the definitions of the Labor Code, consequently make it impossible the double employment of the employees.

Referring to Law no. 102/2015, “On natural gas sector”, article 4, definitions, the applicant does not result to be a vertically integrated undertaking. Specifically, “Vertically integrated undertaking” means an undertaking or a group of undertakings licensed on natural gas sector, where the same person or persons, are entitled to directly/indirectly exercise control over these undertakings and where the undertaking or the group of them perform at least one of the transmission or distribution activities and at least one of the natural gas generation or supply activity, requirements of article 36 for Albgaz company ownership unbundling is realised by Council of Ministers Decision no. 848, of date 07.12.2016, “On the establishment of Albgaz company and the definition of the public authority representing the state as the owner of natural gas sector activities”.

- For the effect of this application from Albgaz company, together with the written request for certification are submitted the documents provided on articles 8 and 9 of the Rules “Approved with decision no.100, of date of date 05.08.2015 and amended with decision 129 of date 31.10.2015”

- All the documents, data and information required according to article 9, of the regulation are submitted at ERE in the Albanian and English Language in the written form and electronically. ERE preserves the confidentiality of commercial sensitive information but may require from Albgaz company any information regarding the certification referring to article 17 of Law 102/2015 “On Natural Gas Sector”.

- Article 9 of the Ministerial Council decision no. D/2011/02/MC-EnC, article 58, point 6 of Law 102/2015 “On Natural Gas Sector”, provides that ERE, shall inform Energy Community Secretariat for the expressed/unexpressed decision for the certification of transmission system operator.

Referring to the request for the certification and the analysis to assess the documentation submitted from Albgaz company at ERE, the Board base don articles; 16, 37, 50, 59, 68 and 80 of Law no 102/2015 “On Natural Gas Sector”, Ministerial Council decision Directive 2009-73-EC, Energy Community Treaty, Regulation no. 715/2009EC as well as articles 5,6, 7, 8, 9,10 of the “*Regulation on the Certification of the Transmission System Operator for Natural Gas*”, approved with decision no. 100 of date 05.08.2015, as amended with ERE decision no. 129 of date 31.10.2015, Ministerial Council Decision no. D/2011/02/MC-EnC, Energy Community Treaty, ratified with Law 9501, of date 03.04.2006, article 19, point 1, letter “b” of the “Regulation

for ERE organization, operation and procedures:” approved with ERE Board decision no. 96 of date 17.06.2016, on their 02.03.2017 meeting, after reviewing the report submitted by the technical directories, on the application of Albgaz company for certification natural gas transmission activity, the Board has taken decisión no.35 of date 02.03.2017 and has decided to begin the procedures for reviewing the application for certification in natural gas transmission activity of Albgaz company.

- **Article 80, of Law no. 102/2015**, “On Natural Gas Sector” has defined that the **Combined Operator** for natural gas performs its activity separated from other activities of natural gas sector like generation, trading and natural gas supply, in conformity with the principles and requirements defined on this Law.

Fulfilling this obligation Albgaz company has submitted at ERE a copy of the company statute where on article 3 points 3.1.5, 3.1.8, 3.2 are provided the permitted activities to perform the function of the license. The main objective of the company activity is to provide natural gas by the transmission, distribution network, by the storage and natural gas plant. The company realizes the object of its activity according to Law no. 102/2015 “On Natural Gas Sector” and concretely the perform of necessary and direct activities connected with the operation and functioning of the transmission network, distribution network, storage facilities in conformity with the legislation in force and the granted license.

The applying company, Albgaz company, following the implementation of all the requirements for the unbundling of natural gas activity, has submitted at ERE the list of documents, data and information that shall be submitted by a company, that applies to be appointed and certified as **Combined Operator in Albania**. For the effect of this application are deposited the following documentation:

- a) The written request for the Certification of the Combined Operator for natural gas;
- b) The document, data and information mentioned on chapter III of the regulation; article 8 and 9,

In conformity with Law no. 102/2015 “On Natural Gas Sector” TSO company establishes a compliance program where are defined the necessary measures to guarantee the discriminatory behavior, which is approved by ERE, and the method to monitor the compliance with this program. The compliance program defines the specific tasks for TSO company employees, to fulfill these objectives. The compliance with the program is monitored independently by a compliance officer.

2. The compliance officer is appointed by the supervisory council, if such a body is not established, from the collective body of TSO company management, after the preliminary approval by ERE. ERE may refuse the approval of the compliance officer only for the lack of

independence or professional capacities. The compliance officer may be a natural or legal entity, independent on his/her work.

3. ERE approves the criteria and obligations for the position of the compliance officer and the term of office. With ERE Board decision no 78 of date 26.05.2017 it was approved the Contract for Providing the Compliance Officer Services on natural gas sector and with decision no. 77 of date 26.05.2017 it was approved the Compliance Program of the Transmission System Operator for natural gas.

For all of the above mentioned, ERE Board with Decision No. 82, of date 26.05.2017, “On the preliminary approval of the “Natural Gas Combined Operator” ALBGAZ sh.a.”,

Decided:

1. The preliminary certification **of the Combined Operator for natural gas** Albغاز company in conformity with articles 37, 50, 59, 68, and 80 of Law no. 102/2015, “On Natural Gas Sector” and article 9, point 6, of 73/2009 EC Directive.
2. Within 3 months from the approval of the Certification Decision, ALBGAZ company shall appoint the Compliance Officer subject of ERE approval and shall draft and deliver at ERE, the Report defined according to the Compliance regulatory Program not later than 12 months after the approval of the ALBGAZ Certification Decision, in conformity to the definitions of Article 21 Directive no. 73/2009 of the European Commission on the rules for the natural gas market and article 47 of law no. 102/2015, “On Natural Gas Sector”.
3. To submit this decision to Energy Community Secretariat, for opinion as defined on Law no.102/2015 article 37 “On Natural Gas Sector”,
4. To submit this decision to the Ministry of Economic Development, Trade, Turism and Entrepreneurship, to the Ministry of Energy and Industry as well as to the Competition Authority.

On 2 June 2017, the Energy Regulator Authority in Albania (hereinafter “ERE”) notified Energy Community Secretariat (hereinafter the “Secretariat” on the preliminary decision for “Albغاز” company certification (hereinafter “Albغاز”), the transmission system operator (hereinafter “TSO”) for natural gas in Albania (hereinafter the “Preliminary Decision”. The Preliminary Decision is approved on 26 May 2017 based on articles 37, 50, 59, 68 and 80 of the Law on Natural Gas Sector, Articles 6, 7, 8, 9, 10 and 11 ERE Rules on the certification of the combined operator for natural gas (hereinafter “ERE Rules on Certification”), and Article 15 of ERE organization, operation and procedures

Pursuant to Article 10 of Directive 2009/73/EC (hereinafter “the Gas Directive”) and Article 3 of Regulation (EC) No 715/2009 (hereinafter “the Gas Regulation”), the Secretariat is required to examine the notified Preliminary Decision and deliver its Opinion to ERE as to the compatibility of such a decision with Articles 9 and 10(2) of the Gas Directive.

On 11 July 2017, a hearing on the unbundling of Albgaz took place at the premises of the Secretariat in Vienna with participation of relevant stakeholders. Following the hearing, ERE submitted to the Secretariat additional documents in support of the Preliminary Decision.

On 29 September 2017, the Secretariat received an Opinion on the Preliminary Decision by the Energy Community Regulatory Board (hereinafter “ECRB”), as requested pursuant to Article 3(1) of the Gas Regulation.

THE SECRETARIAT FINDINGS AND RECOMMENDATIONS

On this Opinion the Secretariat has pointed out that in assessing the compliance of the Preliminary Decision with the unbundling model according to the definitions on the Directive to eliminate a potential conflict of interest between transmission and other activities performed by vertically integrated undertakings, is best fulfilled by implementation of the ownership unbundling model under Article 9 of the Gas Directive, which is transposed in Albania by Article 36 of the Gas Sector Law. On its opinion the Secretariat considers that:

Application of the ownership unbundling provisions to Albgaz:

When assessing the compliance of the Preliminary Decision with the unbundling model enshrined in Article 9 of the Gas Directive, the following aspects matter in particular:

- a) the undertaking to be certified needs to be the owner of the transmission assets as required by Article 9(1)(a) of the Gas Directive;
- b) the undertaking to be certified needs to perform the functions and tasks of a TSO as required by Article 9(1)(a) of the Gas Directive; and
- c) control over and exercising any rights in the undertaking to be certified need to be separated from control over and exercising any rights in undertakings involved in production or supply of natural gas and electricity as required by Article 9(1)-(3),(6),(7) and (12) of the Gas Directive.

a. Ownership of the natural gas transmission system

Article 9(1)(a) of the Gas Directive (as transposed by Article 36(1) of the Gas Sector Law) requires that “*each undertaking which owns a transmission system acts as a transmission system operator*”. This means in principle that the undertaking applying for certification is the owner of the natural gas transmission assets, *i.e.* the natural gas transmission system. Only in exceptional cases the European Commission has accepted that where the TSO does not own the transmission system the rights to manage the system were provided to the TSO through a lease or concession agreement, *i.e.* if these legal titles could be regarded as granting the TSO with rights equivalent to those of an owner

At the date of the present Opinion, there is no sufficient evidence available to prove that Albgaz is *de jure* owner of all transmission assets. In the Preliminary Decision, ERE concluded that the transmission system assets previously owned by Albpetrol were transferred to Albgaz on the basis of Decision No 848. However, the final deadline for evidencing the asset registration was set for 30 September 2017. At the hearing of 11 July 2017, Albgaz explained that the ownership registration of transmission system assets in the name of Albgaz was still ongoing and that certificates by the Real Estate Registration Office (cadastre) had not yet been issued in the name of Albgaz. Similarly, in its decision on the opening of the licensing procedure of Albgaz, ERE stated that some of the property, which is due to be transferred to Albgaz, still “*belongs to Albpetrol and is expected to be registered in the name of Albgaz*”. Subsequently, the Secretariat was informed that certificates proving the registration of the ownership of natural gas transmission assets in the name of Albgaz had been issued by the cadastre in August 2017 without, however, providing the copies of such certificates as requested.

At the same time, Albgaz confirmed at the hearing that all transmission system assets already feature on the company’s balance sheet as its property and the company is in principle allowed to pledge such property for acquiring the financing on capital markets. It also follows from decisions by MZHETTS that the transmission pipelines and related facilities and equipment (such as compressor stations and metering equipment), as well as adjacent land and buildings were deducted from Albpetrol’s capital and transferred to the authorised capital of Albgaz.

Considering the above, the Secretariat has no reason to doubt that the gas transmission system assets are already managed and operated by Albgaz. The Secretariat further recalls its Opinion 3/17 where it found that “*where the TSO has taken all necessary steps to formally register the assets constituting the transmission system in time and according to the rules, the requirement for a TSO to own the transmission system can be satisfied*”. The Secretariat thus agrees with ERE’s findings that Albgaz in principle complies with the requirement of asset ownership. **However, it requests ERE to include in the Final Decision the duty on Albgaz to report on monthly basis to ERE on the ongoing procedure for registration of transmission assets, and to conclude the procedure within six months upon certification.**

b) The applicant undertaking performs the core tasks of the transmission system operator

Article 9(1)(a) of the Gas Directive requires also that the undertaking in question “*acts as a transmission system operator*”. The notion of transmission system operator is defined by Article 2 No 4 of the Gas Directive. It follows from this definition that the key elements for an undertaking to be considered a TSO are the operation, the maintenance and the development of a transmission network. A regulatory authority’s assessment in this respect needs to establish in particular whether a given undertaking is by law and factually performing the core tasks of a TSO, and whether it disposes of the necessary (human, technical, financial) resources for this.

The Secretariat has no reason to doubt that Albgaz, despite having been established only recently, *de jure* and *de facto*, performs the core tasks of a TSO, and disposes of human, technical and financial resources necessary to perform such tasks.

Firstly, task and responsibilities of the TSO are set out in Article 41 of the Gas Sector Law in compliance with Article 13 of the Gas Directive. Furthermore, it follows from the Preliminary Decision and supporting documents that Albgaz was established specifically to perform natural gas transmission activities and that the company's bylaws cover all the key elements of its performance as of a TSO, including operation, maintenance and development of a transmission network.

Secondly, the Secretariat understands that all technical resources and services necessary to perform natural gas transmission activities have already been transferred from Albpetrol to Albgaz. At the oral hearing on 11 July 2017, Albgaz stated that it has 114 employees, which the Secretariat considers sufficient to perform transmission activities at this stage of development. The Secretariat concurs with the ECRB that Albgaz's organisational structure covers all functional fields attributable to the TSO, and that its capital structure is sound.

However, a core function of a TSO consists in granting and managing non-discriminatory third-party access to system users, including collecting of access and congestion charges. While this task has been transposed by Article 42 of the Gas Sector Law, in reality Albgaz has currently only one customer for its transmission services, Albpetrol. As became clear at the oral hearing, the services are not provided on the basis of contractual terms and currently not remunerated by a network tariff, as the provisional transmission tariff set by ERE expired on 20 September 2017. The procedure for adoption of a transmission tariff methodology, which is a precondition for setting a new tariff, has just been opened by ERE on 6 September 2017, and it is approved with ERE Board Decision no.178 of date 08.11.2017. At the oral hearing, Albgaz explained that the company currently negotiates with Albpetrol a transmission contract to be concluded once a new transmission tariff has been set by ERE. Consequently, Albgaz currently provides its services on a non-regulated basis, which is not in line with Energy Community law.

In this respect, the Secretariat acknowledges that Albgaz has just recently started its operations and that Albania's natural gas market is currently very limited. However, the Secretariat concurs with the ECRB that regulated network access and its management by the TSO is one of the central pillars of the Energy Community acquis (is the body of common rights and obligations that is binding on all the EU member states) of Energy Community on gas. It therefore requests that ERE, as a precondition for issuance of a Final Decision, ensures that the natural gas transmission tariff methodology is adopted, and tariffs for Albgaz's services (for all potential system users) are set.

Regarding this concern of the Secretariat it is noticed that:

The Board with decision no.82, of date 26.05.2017, has decided for the preliminary certification of the company as natural gas combined operator "ALBGAZ" company, based on articles 37, 50, 59, 68, and 80 of Law no.102/2015, "On Natural Gas Sector", as well as articles 6, 7, 8, 9, 10, 11

of the rules “On the certification of the Combined Operator for natural gas”, approved with ERE Board decision no.100, of date 05.08.2015 and amended with decision no.129, of date 31.10.2015, as well as article 15, of the regulation “On ERE organization, operation and procedures”, approved with ERE Board decision no. 96, of date 17.6.2016.

ERE Board, with decision no. 127, of date 16.08.2017, has opened the procedure to license “Albgaz” company, in natural gas trading activity.

Following the hearing session, upon the request Protocol No. 292, of date 04.04.2017, on approving the Draft-Contract of Natural Gas Transmission Service, “Albgaz” company has submitted at ERE the official letter Protocol no.81, of date 24.08.2017, protocolled on ERE no.167/16, of date 24.08.2017, (information on the Natural Gas Transmission Service Contract), signed between “Albgaz” company and “Albpetrol” company, where it is clarified that:

Referring ERE decision no. 90, of date 07.06.2017 on “ approving the natural gas transmission temporary tariff”, “Albgaz” company, has invoiced: “Albpetrol” company, for the Natural Gas transmission service, from January 2017 to the actual month, the amount of transmitted natural gas, according to the temporary tariff approved with the above mentioned decision.

The financial relations and the respective invoices based on Natural Gas transmission and distribution services contracts agreed between both companies. (attached the copy of the contract protocol no. 55/1 of date 05.07.2017, for “Albgaz” company and protocol no.4608, of date 06.07.2017 for “Albpetrol” company), as well as ERE Board decision, no.90, of date 07.06.2017, “On approving the temporary natural gas transmission tariff from “Albgaz” company for 05.01.2017–20.09.2017 period”, lets in force until on 31.12.2017, with ERE Board decision no.155, of date 28.09.2017 and shall be effect on the required revenues of ALBGAZ company.

Their update and compensation shall be on the next period, based on the tariff defined by ERE in compliance with article 17, point 1 letter “e” of Law no.102/2015 “On Natural Gas Sector”.

Both companies has prepared the Contract for Natural Gas Transmission Service" signed between the parties: Albgaz company, as natural gas transmitter and distributor and Albpetrol company as natural gas generator, based on the Civil Code of the Republic of Albania, Law no. 9901, of date 01.04.2008 "On Entrepreneurs and Companies" as amended with Law no. 7582, of date 13.07.1992 "**On the State Companies**", Law no. 8450 of date 24.02.1999 "On processing, transporting and trading of oil, gas and their by-products" as amended, Law no. 102/2015, "On

Natural Gas Sector", Law no.48/2014 "On delay payments in the commercial contractual obligations".

The quantity of the accompanying natural gas or the natural gas that shall be delivered from the generator to the transmitter to the delivery points in the generator locations referring to the actual infrastructure of natural gas Transmission-Distribution as follows:

Delvinë, gas metering Polygon near Del-4 well,

Cakran, gas metering Polygon in Drenova compressor station

Frakull, gas metering Polygon near the former compressor station.

Natural gas amount, after being transmitted, shall be delivered from the transmitter to the generator in the delivery points as follows:

For Kash Decantain, the delivery shall be on the metering Polygon near the ovens.

For Visokë Decantain, the delivery shall be on the meterin Polygon near the ovens.

For Private Customers Ballsh Decantain, the delivery shall be on Ballsh gas station.

For the Private Customers Fier Decantain, the delivery shall be on Fier gas station.

Having into consideration all of the above mentioned, based on article 16 of Law 43/2015 "On Power Sector", and Section I article 35, 36, of Law 102/2015 " On Natural Gas Sector" article 8 of the regulation on ERE Rules on the organization, operation and procedures approved with ERE Board decision no 96 of date 17.06.2016, ERE is in the process of approving Natural gas Transmission Service contract between Albgaz and Albpetrol companies.

Regarding the transmission service Methodology as confirmed by the Secretariat, ERE has approved with ERE Board Decision of date 08.11.2017, the Methodology on calculating the tariffs in the transmission and distribution network of natural gas.

c) Separation of control over transmission from production/supply

The Preliminary Decision assesses Albgaz's compliance with the ownership unbundling model against Article 36(5) of the Gas Sector Law, the provision transposing Article 9(6) of the Gas Directive. Article 9(6) provides that two separate public bodies may be seen as two distinct persons within the meaning of Article 9(1) and (2) of the Gas Directive, and may control

production and supply activities, on one hand, and transmission activities on the other hand. The notion of control is further defined by the Merger Regulation and includes the rights enumerated in Article 9(1)(b), (c) and (d) and (2) of the Gas Directive, including the power to exercise voting rights, the holding of majority share and the power to appoint members or the TSO's corporate bodies and those legally representing the TSO.

The Secretariat agrees with ERE that MZHETTS and MEI, representing the state's shares in Albgaz and Albpetrol respectively in accordance with Decision No 848, in principle qualify as public bodies within the meaning of Article 9(6) of the Gas Directive.

In order to fully achieve the objective of Article 9 of the Gas Directive – the prevention of potential and actual conflicts of interest – and to ensure unbundling of undertakings controlled by public bodies on equal footing with private undertakings, Article 9(6) of the Gas Directive cannot be interpreted in a formal way. The separation of control between the two public bodies in question must be effective in the sense that it ensures the full independence of the public body controlling a TSO from any other entity controlling generation and supply activities.

Firstly, a TSO and the public or private body controlling it may, in principle, not be engaged in production and supply activities.

Secondly, the regulatory authority tasked to certify the TSO needs to establish, *de jure* and *de facto* independence between the two public bodies tasked to exercise control over the state-owned undertakings in question, including the prevention of any common influence of a third public or private entity. For that purpose, the public body controlling the TSO must have clearly defined and delineated competences, must carry out the tasks assigned to it by Energy Community and national law in full autonomy and may not be subordinated to public or private entities controlling energy production or supply undertakings.

Thirdly, the fact that the two public bodies in question remain part of the same vertically integrated undertaking, the state, may require the introduction of additional safeguards within the organisation of the TSO to ensure its full independence in day-to-day decision-making. Where one of the two public bodies in question also exercises policy-making functions, which may actually or potentially affect the decision-making of the TSO, full independence may also call for the introduction of additional organisational measures within the public body concerned.

The Transmission System Operator is not engaged in production/supply activities

The ownership unbundling provisions require that a TSO (or the body exercising control over it) may not be engaged in the production of energy nor in its purchase and sale. Derogations may be possible where such activities are “*truly incidental to the core activity of an undertaking ..., and the quantity of energy is also insignificant*”.

The Secretariat has no reason to doubt that Albgaz currently is not engaged in any other activity not related to the transmission and distribution of natural gas, and in particular in natural gas

production and/or supply relations, and that MZHETTS does not exercise control or any right over an undertaking performing any of the functions of production or supply.

ii Competences and control are effectively separated between the public bodies involved

The Secretariat agrees with ERE that in general, MZHETTS and MEI have the necessary competences and tools to exercise control over Albgaz and Albpetrol respectively in a legally and factually independent manner.

Separation of competences between the Ministries

The Constitution of the Republic of Albania, in its Article 102(4), provides that a Minister “*within the principal directions of general state policy, directs, under his responsibility, actions for which he has powers*”. The general state policy is determined by the Council of Ministers, the collegial body forming the Government. Competences granted to the Minister, on the other hand, seem to fall under the Ministry’s exclusive competence.

Moreover, Article 3(5) of Law on the State Administration stipulates that „*according to the principle of clarity in the defining and the distribution of the responsibilities, the allocation and assignation of the functions and administrative duties, between the organs, institutions and administrative units, shall be specific, to avoid overlaps, to be transparent and public in the appropriate way.*” According to Article 5 of the same Law, the Council of Ministers, based on a proposal of the Prime Minister, defines the activities under the responsibility of each Ministry, while the “*Minister is responsible in front of the Council of Ministers and the Parliament for the whole activity of the Ministry.*” According to Article 22 of that Law, “*every minister is responsible for overseeing of the activity of the ministry, the subordinate institutions and autonomous agencies within the relative field of state responsibility.*”

By Decision No 848, the Council of Ministers established control of MZHETTS as exclusive representative of the state’s shares in Albgaz, whereas MEI was appointed in the same capacity as the body exercising control over the state’s natural gas production assets managed by Albpetrol. The Minister personally represents the respective Ministry in the companies’ general assemblies. As was clarified in the Preliminary Decision and during the hearing on 11 July 2017, control over publicly owned joint-stock companies by the competent Ministries representing the state’s shares is being exercised in accordance with the Law on Entrepreneurs and Companies, *i.e.* based on general corporate law rather than public law. Consequently, the rights stemming from the state’s shares in Albgaz, including voting rights, are *de jure* exercised by MZHETTS autonomously and not under the influence of MEI and *vice versa*, thus complying with Article 9(1)(b) of the Gas Directive.

Furthermore, the Secretariat agrees that both Ministries are *de jure* independent in terms of appointing the members of the corporate bodies of their respective companies as required by Article 9(1)(c) of the Gas Directive. The amendments to the Law on the Transformation of State-owned Enterprises adopted on 11 February 2016 provide that the “exercise of the right of

representatives of State property, including the right to appoint members of the supervisory boards in the gas sector companies, shall be done in accordance with the provisions of the Gas Sector Law.” Decision No 848 was subsequently adopted under the Gas Sector Law, thus mandating MZHETTS and MEI to appoint the members of the supervisory boards of respective undertakings under their control. Moreover, according to Article 135 of the Law on Entrepreneurs and Companies, one of the rights of the general assembly (with MZHETTS being a sole shareholder of Albgaz, and MEI of Albpetrol, and thus represented in the general assemblies thereof by their respective Ministers), is the appointment and dismissal of the supervisory and administrative board members. Finally, the Statutes of Albgaz also envisage that the general assembly appoints the supervisory board members. In this capacity, both Ministers in charge have already adopted decisions appointing the supervisory board members of Albgaz and Albpetrol respectively. According to the Statutes of Albgaz, the supervisory board is in charge of appointing the chief executive officer (the Executive Director) of the company. Albgaz Executive Director was appointed by the company supervisory board on 5 January 2017. The Secretariat has no reason to doubt that the formation of supervisory and management bodies of Albgaz and Albpetrol took place in any way differently from what is envisaged by general corporate law. Moreover, Article 9(1)(d) of the Gas Directive prohibiting the same person from being a member of the board of both a producer/supplier and a TSO has been complied with, as a review of the respective decisions appointing the supervisory boards and the administrators of Albgaz and Albpetrol confirms. Neither of Albgaz’s supervisory board members or the Executive Director acts also as a member of the supervisory nor management bodies in Albpetrol, and vice versa.

However, the Secretariat has been informed that at least two of Albgaz’s supervisory board members – Mr Tommy Kola and Mr Stavri Dhima – were employed by MEI at the date of their appointment to the supervisory board and still remains employed by MEI at the date of the present Opinion. Furthermore, Mr Tommy Kola was also appointed supervisory board member of *OSHEE sh.a.* a company engaged in supply of electricity.

The Secretariat considers this arrangement as an obstacle to the factual independence and true separation of the two Ministries and the two companies under their respective control as required by Article 9(6) of the Gas Directive. In particular, the fact that MEI exercises control over energy production and supply companies as well as policy-making functions in the natural gas sector calls for a strict functional and personal separation of staff employed by that Ministry from the corporate governance structures created to control and independence of transmission system operation.

In particular, the appointment of two employees of MEI by MZHETTS raises considerable doubts as to the true independence of MZHETTS in selecting the candidate supervisory board members of Albgaz. MEI staff’s representation in Albgaz’s supervisory board also creates a manifest risk of conflict of interests as these staff members are supposed to act, at the same time, in the interest of the TSO as supervisory board members, and of a public body (MEI) which exercises control over the natural gas production company (Albpetrol) as well as policy-making functions. This conflict of interest includes also the risk of using information in either of the two

functions for respective other function. In view of the significance of the risk of conflict of interest implicit in these dual functions, the Secretariat considers a declaration on the separation of interests as signed by Mr Stavri Dhima as not sufficient to contain it.

Moreover, the Secretariat recalls that Article 9(3) of the Gas Directive requires that ownership unbundling applies also across the natural gas and electricity markets, thereby prohibiting joint influence over an electricity generator or supplier and a natural gas TSO. Against this background, and on the same grounds as outlined above, the Secretariat considers that appointment of Mr Tommy Kola to the supervisory boards of both the natural gas TSO (Albgaz) and the electricity supplier (OSHEE) as another cause for a significant risk of conflict of interests.

Consequently, the Secretariat requests ERE to oblige Albgaz and/or MZHETTS to replace MEI's representatives in the company's supervisory board with members not employed with MEI or the energy production and/or supply undertakings controlled by it not later than in one month following the adoption of the Final Decision.

Regarding this request ERE shall address it at the clause of this decision.

Competences of MEI related to Albgaz under the Gas Sector Law

In its preliminary decision, ERE elaborates on the competences that MEI retains under the Gas Sector Law, in particular competences specifically affecting the decision-making by Albgaz related to network planning and construction, the right to give an opinion to ERE when the latter exercises its competences in relation to the TSO's ten-year network development plan (Article 46(10) of the Gas Sector Law). The Secretariat further notes that Decision No 848 explicitly provides that MEI "exercises its rights in Albgaz pursuant to the [Gas Sector Law] and within its state responsibility field". The Gas Directive, on the other hand, requires that the owner of the transmission system, i.e. the TSO, is responsible for ensuring the long-term ability of the system to meet reasonable demand through investment planning, and discharges this responsibility in full autonomy.

Similar issues were addressed by the Secretariat in its Opinion 1/17 concerning the unbundling of the Albanian electricity TSO, *i.e.* OST. The Secretariat's concerns were also discussed at the hearing held on 11 July 2017.

As regards the competences of MEI under Article 5 of the Gas Sector Law, the Secretariat deems them to be of a general policy nature rather than a specific involvement in the activities and tasks of the TSO. They will be discussed below.

With regard to the right of MEI to propose the approval (or rejection) to the Council of Ministers of any new energy infrastructure to be constructed by the TSO, as stipulated in Article 11 of the Gas Sector Law, MEI explained in the OST certification procedure that the political significance of such a decision, especially in case of interconnectors depending on an arrangement between two sovereign states. The Secretariat was and is still not convinced by that line of argument.

Going even beyond MEI's influence on the construction of infrastructure in the electricity sector, MEI's key role in the approval procedure at the Council of Minister in the natural gas sector is extended so as to cover all natural gas transmission and distribution pipelines, and not only interconnectors, as well as any other natural gas facility, equipment and installations. This gives MEI a comprehensive influence over the development of the entire gas infrastructure of national as well as of regional importance to the detriment of the TSO's autonomy over such development as required by the *acquis*. European energy law tasks the TSOs alone to develop secure, reliable and efficient transmission systems, *inter alia*, through Article 13(1)(a) of the Gas Directive. Article 2 No 4 of the same Directive defines a TSO as "a natural or legal person responsible for [...] developing the transmission system in a given area, and where applicable, its interconnections with other systems [...]."

In Opinion 1/17 on the certification of OST, the Secretariat explained that European law in principle does not preclude the Council of Ministers and/or Parliament to conclude intergovernmental agreements with the neighbouring state in question to govern certain aspects the bilateral relations that are created by the implementation of such a decision. However, the competence of MEI and the Council of Ministers to approve the construction of natural gas transmission pipelines, interconnectors, and any other natural gas facility, equipment and installation encroaches upon the independence of the TSO and the body exercising control under corporate law over it, *i.e.* MZHETTS. Moreover, the Secretariat already recalled the European Commission's case practice "whereby a person holding interests in gas production and supply at the same time has a decisive say in whether or not important investments in gas transmission infrastructure can go ahead or not, the incentive arises to abuse the control over the investments in the TSO with a view to favour the generation or supply interests, in casu by keeping potential competitors out of the market through preventing investments from taking place."

The Secretariat therefore considers that the right of MEI to propose approval or rejection of natural gas transmission system developments to the Council of Ministers fails to comply with the Directive's prohibition for MEI to exercise "any right" over Albgaz. This non-compliance is not addressed by ERE in the Preliminary Decision, nor do any solutions for relevant remedial measure follow therefrom. In this respect, the Secretariat notes that in its Final Decision in the OST certification procedure of 15 March 2017, ERE concluded "that this objective [of compliance] can be achieved through the promotion of inter-institutional cooperation by OST and the Ministry of Economy, for the implementation of amendments in the primary and secondary legislation, concerning the transfer of powers from the Ministry of Energy and Industry to OST's shareholder, *i.e.* the Ministry of Economic Development, Trade, Tourism and Entrepreneurship." To the Secretariat's knowledge, no such amendments have been adopted so far. Nor the Secretariat was provided with any proof that such an "*inter-institutional cooperation*" is able to result in any tangible outcome remedying the above-indicated non-compliance without the adoption, as a priority action, of necessary amendments to the primary law, *i.e.* the Gas Sector Law.

The Secretariat therefore requests ERE, in its Final Decision, to require for the adoption and entry into force of the necessary amendments to Article 11 of the Gas Sector Law as a condition subsequent within a reasonable transitional period in order for the certification to remain valid.

As regards the obligation of ERE to request the MEI's opinions on Albgaz's draft ten-year network development plans before approval as well as on any measures taken by ERE in the context of monitoring and ensuring compliance with the plan once adopted (Article 60 of Power Sector Law), the Ministry of Energy explained that this provision is not used until now.

As regards the obligation of ERE to request the MEI's opinions on Albgaz's draft ten-year network development plans before approval as well as on any measures taken by ERE in the context of monitoring and ensuring compliance with the plan once adopted (Article 46(10) of the Gas Sector Law), MEI explained at the hearing of 11 July 2017 that it has separate structural units dealing with its policy functions in relations with Albgaz as the TSO, and exercise of the shareholding rights in relations with Albpetrol and electricity production/supply undertakings respectively, with different directors subordinated to MEI's Secretary-General. Evidently, any opinion under Article 46(10) of the Gas Sector Law would thus be prepared by the administrative (energy policy) department inside the Ministry of Energy, and not by the department dealing with MEI's shareholding rights in state-owned energy undertakings. However, the Secretariat remains concerned that MEI could be biased by its control over Albpetrol as well as electricity generation and supply undertakings when giving such an opinion, and that such a bias can result in negative effects on the development of the network.

To ensure the independence of TSO in transmission planning, the Secretariat repeatedly proposes to empower MZHETTS to issue opinions regarding the network development plan to ERE. Should be clarified by necessary legislative amendments that the Ministry responsible for energy shall mean MZHETTS as the "*next ministry responsible for the power sector*" according to the definition made on Natural Gas Sector Law.

Furthermore, shall be defined that MEI has no right to intervene to TSO autonomy on the network development and investment planning and that necessary decisions of the shareholders are exclusively taken by MZHETTS. MEI's role in this regard should be equal to that of any other stakeholder in the gas sector and may not go beyond submission of proposals in the course of public consultations regarding draft decisions by ERE and/or TSO. Besides, it would be necessary that ERE makes Albgaz's certification dependent also on amendments to the Council of Ministers Decisions No 833 and 835, so that the tasks granted to MEI in relation to Albgaz can be transferred to MZHETTS. In this way, MZHETTS, in its capacity of a shareholder of Albgaz would be empowered to exercise its competences to take decisions on investments in line with Article 13(2) (a) and (b) of the Statutes of Albgaz.

In this respect, the Secretariat repeatedly notes that no amendments, as indicated in ERE's Final Decision in the OST certification procedure, have been adopted so far. Nor the Secretariat has any reason to expect for any tangible outcome remedying the above-indicated non-compliance

without the adoption, as a priority action, of necessary amendments to the primary law, *i.e.* the Gas Sector Law, and related secondary legislation acts.

The Secretariat therefore again requests ERE, in its Final Decision, to require the full transfer of tasks related to Albgaz to its sole shareholder, MZHETTS. And, for this purpose, to require for the adoption and entry into force of the necessary amendments to the Gas Sector Law and to Council of Ministers Decisions No 833 and 835 as a condition subsequent within a reasonable transitional period in order for the certification to remain valid.

Regarding this request of the Secretariat, ERE notices that even in the final certification decision of the TSO for Electricity to avoid the possible conflict of interest because of any influence of MEI, according to the definitions of natural gas, the certification decision shall also include ALGAZ obligation to fully transfer the obligations regarding TSO, to its sole stakeholder *i.e.* the Ministry of Economy.

Regarding this opinion of the Secretariat, it is noticed that actually the competences of the Ministry of Energy and Industry are regulated based on Law no. 102/2015, “On Natural Gas Sector” as specifically explained even in the above mentioned paragraphs of this decision. On the other hand, it shall be explained that Albania has ratified the Energy Community Establishment Treaty and is a contractor party obliged to undertake all the steps to ensure the fulfillment of the obligations deriving from this Treaty, it is very important the taken of the measures for the necessary regulations in the legal and by-legal acts that regulate the power sector in conformity with Directive 73/2009 of the European Parliament.

Taking into consideration the fact that the main purpose of the Energy Community Treaty process is the preparation of the region’s power sector to be integrated in the EU power market by adopting and implementing the *Acquis Communautaire* in the energy area, and considering Ministerial Council decision of the Energy Community of date 06.10.2011 in Chinsinau, Moldavia, according to which beginning from 1 January 2015 the Third Energy Package is obligatory for all the Contractory Parties of the Energy Community, ERE accesses the need for amendments in the national legislation on the basis of EU third legislative basis in energy area (Directive 2009/72/EC).

The role of the Prime Minister

Article 9(6) of the Gas Directive precludes a third public body such as the Prime Minister or, as the case may be, the President, from giving instructions as regards the responsibilities of the two public bodies designated to control the undertakings performing the functions of the TSO and production/supply, respectively. In the Preliminary Decision, ERE elaborates on such powers, in particular on the competence of the Prime Minister and its limits *vis-à-vis* individual Ministries, in the light of Albania’s constitutional principles, the separation of powers enshrined in national law, and case-law of the Constitutional Court of Albania. Based on extensive explanations provided by ERE in the Preliminary Decision and the hearing of 11 July 2017, as having regard

to its considerations in Opinion 1/17 on the certification of OST, the Secretariat has no reason to doubt that the above considerations are not only enshrined in Albania's law by letter but also represent its constitutional reality.

- (iii) The governance of the TSO and the public bodies involved in the energy sector allow for full independence in day-to-day decision making

Article 9(6) of the Gas Directive does not only require structural changes between the public bodies involved in the energy sector but also within the TSO itself and within individual public bodies to the extent this is required by the achievement of the objective of ownership unbundling, the prevention of potential and actual conflicts of interest. While a formal separation of competences on the level of government constitutes an important *sine qua non* for unbundling of state-owned TSO, full independence of network operation from production and supply interests also requires measures related to, *inter alia*, the elimination of exchanges of any confidential information on a daily basis. Given that under Article 9(6) of the Gas Directive, the TSO continues to operate within the state as if it were a vertically integrated undertaking, this is of particular importance. Hence, the state must have effective measures in place to prevent undue coordination, discriminatory behaviour and undue dissemination of confidential information, including at the level of supporting staff and administration. To what extent this requires more detailed ring-fencing measures and an increased regulatory oversight is to be assessed on a case-by-case basis.

Safeguard measures within the TSO

The Preliminary Decision is based largely on ERE's Rules on Certification which make obligatory certain measures meant to increase the operational independence of the TSO. This includes Article 8(1) (q) of ERE's Rules on Certification requiring for the prevention from disclosure of confidential and other commercially sensitive information possessed by the TSO. Article 8(1)(p)(iii) of ERE's Rules on Certification also require that the TSO's management and authorised representatives declare their interests stating that such persons do not participate in activities of energy undertakings engaged in the production, distribution and/or supply of natural gas and/or electricity. These two requirements were made an explicit condition on Albغاز in the Preliminary Decision. Furthermore, Albغاز's Code of Ethics elaborates on how the confidential and other commercially sensitive information is protected (Article 16.3) and how conflicts of interest will be handled (Article 16.8). Besides being applicable to the management of Albغاز, the Code of Ethics also applies to all Albغاز's employees, thereby binding them to respect the provisions on preventing conflict of interest and protecting confidential information.

Furthermore, the Annex to ERE's Rules on Certification, *inter alia*, requires the TSO to have a commercial identity (brand) distinguished from other undertakings, to be officially registered as a legal entity under Albanian law, and prohibits the use of IT, security and access systems and buildings occupied by the TSO together with undertakings active in productions and supply. It also prohibits that the same provider to be contracted for IT, security and access services. Albغاز's compliance with these requirements was assessed by ERE in the Preliminary Decision.

Finally, the Preliminary Decision assesses Albgaz's compliance with regard to the requirement for independent auditing of the company's financial results. According to the Law on Entrepreneurs and Companies, the financial auditors of the undertakings are to be appointed by the General Assembly, *i.e.* MZHETTS in case of Albgaz. Corresponding requirement is also established in Article 16.3(e) of the Statutes of Albgaz. At the hearing of 11 July 2017, MZHETTS stated that *Albgaz* is financially independent company, as it does not require financing from the state budget. In accordance with Article 135 of the Law on Entrepreneurs and Companies, MZHETTS explained that, acting as a sole shareholder of *Albgaz*, it approves the company's financial (investment) plan, and financial statements further audited by an independent auditor.

The ownership unbundling model is meant to ensure a situation in which discrimination can be excluded based on ownership structure of the TSO. In cases under Article 9(6) of the Gas Directive, where the control remains within the structures of the state, additional behavioural safeguards may be required to ensure the independent operation of the network. While the Secretariat agrees with the Preliminary Decision that the abovementioned measures are supportive in the avoidance of conflicts of interest and the sharing of confidential information, it considers it beneficial beyond these measures to request Albgaz to implement a compliance programme and appoint a compliance officer. As noted by the Secretariat and the ECRB on previous occasion, "*the concept [of ownership unbundling in line with Article 9(6) of the Gas Directive] must at least be accompanied by strict compliance reporting and continuous regulatory monitoring*". The Secretariat notices that the TSO's Compliance Programme was already adopted by ERE in accordance with Article 21 of the Gas Directive and concurs with ERE's additional requirement on Albgaz to appoint its compliance officer subject to ERE's approval within 3 months from the issuance of the Final Decision and to draft and submit to ERE the report required under the Compliance Programme not later than in 12 months after the issuance of the Final Decision.

Safeguard measures within MEI

The area under the responsibility of MEI is defined in Council of Ministers Decision No. 833 as including the drafting and implementation of policies, *inter alia*, in the state's responsibility area of the natural gas sector. As the public body exercising control over the main production and supply activities in the country performed by Albgaz and electricity undertakings, there is a risk that MEI may be biased when exercising its policy-making functions.

At the hearing of 11 July 2017, MEI explained once again its internal restructuring, noting that it has separate structural units dealing with its different fields of competence, *i.e.* administrative powers (such as natural gas policy-making in relations with Albgaz as the TSO) and shareholding rights (in relations with Albpetrol and other production/supply undertakings) in particular, with different directors subordinated to MEI's Secretary-General. As already explained in the Opinion 1/17 on the certification of OST, the Secretariat considers that

sufficient under the condition that the Compliance Programme to be implemented by Albgaz also covers monitoring of the separation of competences within MEI.

Vertical relations between natural gas and electricity markets

The Secretariat reiterates that Article 9(3) of the Gas Directive requires that ownership unbundling applies also across the natural gas and electricity markets, thereby prohibiting joint influence over an electricity generator or supplier and natural gas TSO, or a natural gas producer or supplier and electricity TSO. Compliance with this provision has not been assessed in the Preliminary Decision. It matters for Albgaz's certification as the state fully owns OSHEE, an undertaking engaged in distribution and supply of electricity, and KESH, an electricity generator and trader.

Considering ERE's Final Decision on certification of OST, and in particular noting that MZHETTS, Albgaz's shareholder, exercises the state's corporate rights over the electricity TSO, whereas MEI, Albpetrol's shareholder, over OSHEE and KESH, the Secretariat considers that separation sufficient to prove the principle absence of vertical relations between natural gas and electricity markets within the context of the present certification procedure.

The Secretariat invites ERE to elaborate in its Final Decision on the application of the unbundling rules across natural gas and electricity sectors and their implementation in Albania.

A. before issuing the Final Decision, ensures that the natural gas transmission tariff methodology is adopted, and tariffs for Albgaz's services (for all potential system users) are set;

For this request are given the above explanations (on pg 57)

B. includes in the Final Decision the duty on Albgaz to report on monthly basis to ERE on the ongoing procedure for registration of transmission assets, and to conclude the procedure within six months following the adoption of the Final Decision;

This request of the Secretariat shall be addressed on the decision clause based on ERE right to monitor the requests regarding the certified company.

C. includes in the Final Decision the duty of Albgaz and/or MZHETTS to replace MEI's representatives in the company's supervisory board with members not employed with MEI or the energy production and/or supply undertakings controlled by it not later than in one month following the adoption of the Final Decision;

To ensure the avoidance of the control from MEI through TSO administrative boards, ERE accesses fair the request to replace MEI representatives to the supervisory boards of the companies with members which are not employed by MEI or production and/or supply companies that are controlled by it not later than one month after the entry into force of the approved Final Decision.

D. includes in its Final Decision the requirement for the adoption and entry into force of necessary amendments to Article 11 of the Gas Sector Law as a condition subsequent within a reasonable transitional period in order for the certification to remain valid;

Regarding this request of the Secretariat, as explained above ERE concludes that such a thing may be realized by promoting cross-institutional cooperation of TSO and the Ministry of Economy to realize the legal and by-legal amendments regarding the transferring of the competences of the Ministry of Energy and Industry to the TSO shareholder, the Ministry of Economy and Finance.

E. includes in its Final Decision the requirement for the full transfer of tasks related to Albgaz to its sole shareholder, MZHETTS, and, for this purpose, the requirement for the adoption and entry into force of the necessary amendments to the Gas Sector Law and to Council of Ministers Decisions No 833 and 835 as a condition subsequent within a reasonable transitional period in order for the certification to remain valid;

As explained above ERE assesses the need for national legislation amendments based on the EU third legislative basis for energy (Directive 2009/72/EC). What required shall be included on the clause of this decision.

F. elaborates in its Final Decision on the application of the unbundling rules across natural gas and electricity sectors and their implementation in Albania.

Regarding this request of the Secretariat ERE Board considers that, the legal and operational independence of ALBGAZ company and the Provision to respect the legal framework in force for this purpose is provided on Law no.102/2015 “On Natural Gas Sector”. Concretely, referring article 3 of this Law “Transmission System Operator” is the respective structure licensed for the operation, organization and management of the transmission system.

From the analysis of these provisions results that TSO is considered as a public structure separately licensed to perform the respective activity and exactly to ensure transparency and avoid interdependence from other participants of the Market. In this framework the Transmission System Operator is evidenced as one of the electricity market participants, which as the other participants, takes part in the electricity market only to ensure the necessary energy to cover the losses in the network, for the balancing and the ancillary services.

On the other hand, the operation of natural gas market is provided to be performed in conformity with the market rules object of approval by ERE, a process during which ERE cooperates with all the participants in natural gas sector (although proposed by TSO).

Furthermore, as provided on article 54 of the Law and the provisions of Directive 2009/73/EC, the allocation and independence of the Tso, for the certification of the TSO, shall mean the

control of the Transmission System Operator allocated from the other power and natural gas activities like generation, distribution, trading, and Electricity supply.

- Based on Law no. 102/2015“On Natural Gas Sector”, Albgaz company performs its activity separately from other activities of Natural Gas Sector, like natural gas generation, trading and supply in conformity with the principles and requirements defined in the Law.

Currently MEF (Ministry of Economy and Finance) results the sole shareholder of Albgaz with a 100% state owned capital, as defined on the Council of Ministers Decision No. 848, of date 07.12.2016“*On the establishment of Albgaz company and defining the public authority Representing the State as the Owner of Albgaz Sh.a and Albgaz Sh.a shares*”. In this way the Ministry of Economic Development, Tourism, Trade and Entrepreneurship exercises direct control, as the owner of Albgaz company.

So, from all of the above and being that the activity of the combined operator is performed by Albgaz in the form of trading company (state-owned joint stock companies), it is concluded that the authority mentioned above performs the Shareholder’s Assembly for Albgaz company taking any decision in the competence of the Shareholder’s Assembly in a joint stock company according to the provisions of Law no. 9901 of date 14.04.2008“*On entrepreneurs and companies*”, as amended.

In this context, should be mentioned once more that the Ministry of Energy and the Ministry of Economy and Finance are two high institutions/bodies of the state administration organized according to Law no. 90/2012 “*On the organization and operation of state administration*”. Based on Law no. 90/2012, each of these Ministries performs all the administrative functions within the respective area of the state responsibility. Concretely, the respective area of responsibility for the Ministry of Industry and Energy is defined on Council of Minister Decision no.504 of date 13.09.2017“*On defining the respective area of state responsibility of the Ministry of Infrastructure and Energy*”, while for the Ministry of Finance and Economy the responsibility area is defined by Council of Minister Decision no. 503 of date 13.09.2017 “*On defining the state responsibility area of the Ministry of Finance and Economy*”

Furthermore regarding Albgaz company, according to Council of Minsiter Decision No. 848, of date 07.12.2016, the Ministry of Energy exercises the rights over Albgaz company in conformity with the provisions of Law no. 102/2015, “*On Natural Gas Sector*” and in conformity with its state responsibility area.

While based on article 36 point 2 of the Law, it is defined that “*To ensure the independence of the TSO the same person or persons shall not be entitled in the same time to:*

- a) directly or indirectly to exercise control over a licensed undertaking performing any of the functions of production or supply of natural gas and electricity, and to exercise control over decision making or exercise any right over the TSO or over the transmission system;

- b) directly or indirectly to exercise control on decision making over the TSO or over the transmission system, and to exercise control on decision making or exercise any right over a licensee performing any of the functions of production or supply of natural gas and electricity;
- c) to appoint members of the supervisory board, the administrative board or bodies legally representing the undertaking, of the TSO or the transmission system, and directly or indirectly to exercise control on decision making or exercise any right over a licensee performing any of the functions of production or supply of natural gas and electricity.
- ç) to be a member of the supervisory board, the administrative board or bodies legally representing the licensee, to the licensees, performing any of the functions of production or supply and the TSO or the transmission system.

Also, the following provisions of this article define that:

- 4. The restrictions stipulated in “a”, “b” and “c”, of point 2, of this law, shall be applicable in particular:
 - a) the power to exercise voting rights;
 - b) the power to appoint members of the supervisory board, the administrative board or bodies legally representing the licensee;
 - c) the holding of a majority share.
- 5. The obligation set out above, shall be deemed to be fulfilled in a situation where two or more undertakings which own transmission systems have created a joint venture which acts as one TSO in two or more countries. No other undertaking may be part of the joint venture, unless it has been designated as an independent TSO, and certified under the terms and conditions stipulated by the applicable legislation.
- 6. Where the person referred above is a public body controlled by the state, then the two separate public bodies that exercise control over the TSO or over the transmission system on the one hand, and over an licensee, that performs any of the functions of production or supply of natural gas and electricity on the other, shall be deemed not to be the same person or persons.

Concretely, as evidenced above, based on Council of Minister Decision No. 848 of date 07.12.2016 “*On the establishment of Albgaz company and in defining the public authority Representing the State as the Owner of Albpetrol and Albgaz Company Shares*”, results that the Ministry of Economy, is the holder of 100 % of Albgaz shares while MIE is 100 % shareholder of Albpetrol company which respectively exercise the activity of the combined operator for natural gas and the generation of natural gas.

In this way for ownership unbundling of Albgaz company according to the recommendation of the Secretariat, ERE concludes that this unbundling results that is performed according to the

provisions of article 80 of Law no.102/2015 “On Natural Gas Sector”, and in conformity with the Certification Regulation, where it is defined that, above the criteria that shall be fulfilled by the applicant to enable the decision-taking and the certification it is an obligation that the legal person that owns the Natural Gas Combined Operator shall not have direct or indirect control in the generation, distribution, supply activities or vice-versa.

Apart of the need to further process and monitor the issues listed above, because of TSO certification, the Secretariat on its Opinion has found appropriate to recommend ERE to impose some additional conditions to the TSO.

In conclusion the Secretariat supports Albgaz certification in conformity with ERE Preliminary Decision, subject to the following remarks which are addressed on the above paragraphs on this decision.

According to Article 11 point 5 of the Regulation on the certification of the Transmission System Operator for Natural Gas referring to what is provided above, ERE taking into consideration even the abovementioned Opinions of the Secretariat has decided their addressing in the final decision of ALBGAZ company certification.

The Competition Authority with the official letter no.242/1 of date 13.07.2017 regarding the preliminary certification of *Albgaz company* has taken decision no.469 of date 11.07.2017 as follows:

To recommend to Energy Regulator Authority to design and send for approval to the Council of Minister the Market Model and the Rules for the natural gas.

To provide the unbundling of the accounts for each activity.

Regarding this decision of the Competition Authority, ERE explained this last one as follows:

Article 88 point 1 of Law 102/2015 “On Natural Gas Sector” has provided that:

The Minister responsible for energy, in collaboration with stakeholders in the gas sector, ERE and the Competition Authority, designs the gas market model, which is approved by the Council of Ministers.

Implementing the requirements of the above mentioned law, MEI in cooperation with Energy Community Secretariat, have prepared the draft decision of the Council of Ministers “*On approving the Natural Gas market model*”. With the official letter No.3667 Prot, datë 03.05.2017 delivered on ERE on 04.05.2017 Protocol number 368, this draft decision is send to ERE as the interested party to express their opinion. Attached it is send a copy of this document on which ERE and the Competition Authority are invited to give their opinion, as the interest parties and not the designers of the Market Model.

Regarding the second recommendation shall be explained that:

On article 80 of Law 102/2015 “On Natural Gas Sector foreseen that the *provisions of Articles 36 and 50 point 2, of this law, do not exclude the combined operation of transmission systems and distribution, LNG and storage facilities by a single operator, who must be independent from the legal, organizational and decision making standpoint from other activities not related to the operation of transmission and distribution systems, LNG and storage facilities. The combined transmission system operator must be certified in accordance with the provisions of this law.*

Shall be explained that Albgaz sh.a has made this application at ERE supported on Council of Ministers Decision No.848, of date 07.12.2016 “On the establishment of Albgaz company and defining the public authority representing the state as the owner of shares for “Albpetrol” and “Albgaz” and which defines that: “With the registration on National Business Center “Albgaz” company shall apply at Energy Regulator Authority for certification as transmission operator according to the procedures defined on article 37 of law no 102/2015, “On Natural Gas Sector” as well as the equipment with license for transmission and distribution of natural gas, in conformity with the procedures defined on articles 22,23 and 24 of Law no.102/2015 “On natural gas sector”

Albgaz company has submitted the Ownership Unbundling form. Based on articles 37, 50, 59, 68, and 80, of Law no. 102/2015, “On natural gas sector”, the Combined Operator exercises its activity separated from other activities in the natural gas sector, which are not connected with the operation of transmission and distribution systems, LNG plants and storage facilities. For what is defined on point 3, of Council of Ministers decision no.848, of date 07.12.2016, “*On the establishment of Albgaz sh.a and defining the public authority representing the state as the owner of natural gas sector companies*”, results that the sole shareholder of Albgaz sh.a. with 100 % state capital is MEF (the Ministry of Economy and Finance)

For all of the above mentioned, ERE Board on their 08.11.2017 meeting ,

DECIDED

1. The final approval of the natural gas Combined Operator Albgaz company in conformity with articles 37, 50, 59, 68, and 80 of Law no. 102/2015, “On Natural Gas Sector” and article 9, point 6, of 73/2009 EC Directive.
2. Within 1 month from the entry into force of this decision Albgaz shall replace MIE representatives at the supervisory council of the company with members which are not employed at MIE or other electricity generation and/or supply companies that are controlled by it.
3. Albgaz shall report each month at ERE on the registration procedure of the transmission assets and conclude the procedure within 6 (six) months after the approval of the Final Decision.

4. Within 3 months after the approval of Albgaz Certification Decision, ALBGAZ company shall appoint the Compliance Officer subject of ERE approval and shall draft and deliver at ERE the Report defined according to the regulatory Compliance Program not later than 12 months from the approval of the Certification Decision of ALBGAZ company, in conformity with the definitions of article 21 Directive no.73/2009 of the European Commission “On the rules of natural gas market” and article 47 of Law no. 102/2015 “On Natural Gas Sector”.

5. Within 12 months from the entry into force of this decision, to implement the recommendations of the Secretariat Opinion, Albgaz company, shall submit at ERE evidences for the guarantee regarding:

5.1 The Independence of the Financial Audits The financial Audit of Albgaz company shall be independent, within the meaning that the financial audit shall not be the same subject performing tasks or performs the audit of the entities/undertakings that perform any of natural gas generation or supply activities. Regarding this issue, Albgaz company shall require the General Assembly (MEF) the ensurance to avoid appointment of the same Financial Audits.

5.2 Cross-institutional cooperation for realising the amendments in the legal framework and transferring the competences to the Ministry of Economy. To fulfill this obligation, Albgaz sh.a shall submit at ERE the documentary evidences that show the necessary legal and by-legal amendments regarding the transfer of the competences of the Ministry of Infrastructure and Energy to the Albgaz shareholder the Ministry of Economy and finance, are performed and are effective.

6. Non-compliance of the obligations provided on points 2, 3, 4 above by Albgaz sh.a, brings the reopen of the certification procedure in conformity with article 14 of the “Rules on the certification of the transmission system operator for natural gas”.

7. Albgaz sh.a shall report each 3 months to the ERE and to the Energy Community Secretariat regarding the compliance of points 2,3,4,5 of this decision the progress of the competences transferring process from the Ministry of Infrastructure and Energy to the Ministry of Economy and Finance.

8. To submit this decision to Energy Community Secretariat.

9. To submit this decision to the TSO, the Ministry of Economy and Finance, the Ministry of Infrastructure and Energy and the Competition Authority.

This decision enters immediately into force.

This decision is published in the Official Gazette.

This decision may be appealed to Tirana Administrative Court, within 45 days from the publication date in the Official Gazette.

ENERGY REGULATORY BOARD

BOARD

ERE Board Members Vote for:

DECISION

No 179 of Date 08.11.2017

ON

**THE CERTIFICATION OF THE “COMBINED OPERATOR OF NATURAL GAS ”
ALBGAZ COMPANY**

Board Members

Pro-s

Con-s

Petrit Ahmeti

Adriatik Bego

Abaz Aliko

Entela Shehaj
