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**DECISION**

**No. 12, of date 14.02.2014**

**ON**

**REVIEWING AND APPROVING THE REGULATORY COMPLIANCE PROGRAMME SUBMITTED BY TAP AG BASED ON FINAL JOINT OPINION WITHIN THE EXEMPTION PROCEDURE FOR TAP PIPELINE**

**ERE Board of Commissioners, on its meeting of date 14.02.2014,**

**Implementing:**

Directive 2009/73/EC of the European Parliament and Council of date 13.07.2009 (in the following content: Directive 73/09);

- Regulation 713/2009/CE of European Parliament and Council of date 13.07.2009
- Regulation 715/2009/CE of European Parliament and Council of date 13.07.2009.
- Law no. 9946, of date 30.06.2008. "For natural gas sector", as amended;
- Decision No 27, of date 01.03.2013, of ERE's Board of Commissioners "For approving the binding exemption of TAP – AG company from the requirements of articles 9, 32 and 41 (6), (8) and (10) Directive 2009/73/EC for Trans Adriatic Pipeline project";
- European Commission Decision C (2013) 2949 of date 16.05.2013, "*Exemption of Trans Adriatic Pipeline from the requirements on third party access, tariff regulation and ownership unbundling laid down in Articles 9, 32, 41(6), 41(8) and 41(10) of Directive 2009/73/EC*";
- Energy Community Secretariat opinion (no 1/2013) of date 14.05.2013;

- Decision no. 64, of date 13.06.2013, on ERE Board of Commissioner “For amending ERE Board of Commissioner Decision, no. 27 of date 1.03.2013 “For approving the binding exemption of TAP-AG company from the requirements of articles 9, 32 and 41(6), (8) and (10) of Directive 2009/73/EC for Trans Adriatic Pipeline” project, to take in consideration Energy Community Secretariat Opinion (no 1/2013) and European Commission Decision (C(2013)2949” by approving the document “Final Joint Opinion of the Energy Regulators on TAP AG's Exemption Application Autorita per l'Energia Elettrica e il Gas (Italy), Enti Rregullator i Energjise (Albania) and Regulatory Authority of Greece (Greece)” as follows *Final Joint Opinion*;
- Decision No. 127 of date 07.11.2013 “On approving tariff methodology (TAP Tariff Code), proposed by TAP AG, according the obligations defined in “Final Joint Opinion” with the TAP pipeline exemption procedure;
- TAP AG request of date January 8 registered from ERE with Protocol no.56, of date 14.01.2014;
- TAP AG request of date 05.02.2014 (Protocol no. 56/1 of date 08.02.2014), on approving the final draft of “Regulatory Compliance Program” delivered before on 15.11.2013 (Protocol no. 500/19). The same request is submitted at the same time and form Regulator Authorities of Italy (AEEG) and Greece (RAE)

### **Considering that:**

- TAP AG company has submitted at in conformity with Law no. 9946, of date 30.06.2008 “For Natyral Gas Sector” the request for exemption regarding an interconnector project that passes through Greece and Albania to continue in Italy (as follows TAP pipeline) and as such because of the exemption it is necessary the inclusion of regulator authorities (as follows Authorities) for Greece Energy Regulator Authority (as follows RAE) and for Italy the Authority for Gas and Waters (as follows AEEG) ;
- Above all this request includes the exemption from article 9.1 of Gas Directive (2009/73/EC) (as follows the exemption from the condition of ownership separation) ;
- ERE with Decision No. 27, of date 01.03.2013, of its Board of Commissioners, decided “For approving the binding exemption of TAP – AG company from the requirements of articles 9, 32 and 41 (6), (8) and (10) of Directive 2009/73/EC for Trans Adriatic Pipeline” project;
- With Decision no. 64, of date 13.06.2013, ERE Board of Commissioners approved ERE’s Board of Commissioner amendment, no. 27 of date 1.03.2013 “For approving the Binding Exemption of TAP AG Company from the requirements of articles 9, 32 and 41(6), (8) and (10) of Directive 2009/73/EC for Trans Adriatic Pipeline” project, to take in consideration the Energy Community Secretariat Opinion (no.1/2013) and European Commission Decision (C(2013)2949”, by approving the document “Final Joint Opinion of the Electricity Regulators on the Application of TAP AG for Exemption.

- Paragraph 4.5 of Final Joint Opinion exempts TAP AG from the obligation of ownership separation for a period of 25 years from the moment of setting into function the pipeline infrastructure.
- Also paragraph 4.5.1 of Final Joint Opinion obligates TAP AG to set in implementation functional unbundling before allocating the capacities as result of the First Booking Phase forecasted on March 17 2014, as communicated from TAP AG on the letter of date January 8 2014 (Protocol no. 56, of date 14.01.2014).
- Especially the above mentioned paragraph obliges TAP AG to:
  1. Develop a “Regulatory Compliance Program” that should be submitted for approval at the three regulators with the purpose of guaranteeing equal treatment of the participants in the Booking Phase and to prevent the flow of commercial interest information to the shareholders.
  2. To find out a person that will be responsible, Regulatory Compliance Officer (RCO), not later than one month from the date of Compliance Program approval from the Regulators.
- Also the above mentioned paragraph forecasts that “Regulatory Compliance Programme” should determine at least:
  - a) The measures taken to guarantee equal treatment of the participants in the first *Booking Phase*;
  - b) The obligations that TAP AG employees should fulfil to observe the above mentioned Program;
  - c) The responsible person and body to control the compliance Program and presenting an annual report on the approved measures from the Regulators;
  - d) The principles relating tariff methodology and capacity managing regulations commercialised from TAP AG;
- Specifically referring to letter d) above, the program we are speaking on one part renews the tariff methodology defined in TAP Tariff Code ( approved with ERE’s Decision no. 127, of date 07.11.2013 ) and on the other determines that capacity management regulations will be subject of the Grid Code that based on paragraph 4.7, point 1, of Final Joint Opinion, TAP AG will submit for approval from the Regulators not later than 1 year before setting into operation the pipeline infrastructure;
- Finally paragraph 4.5, point 2, of Final Joint Opinion, forecasts that TAP AG to be certified as Independent Transmission Operator (ITO) before setting into operation the infrastructure pipeline but not later than January 1 2018;
- On February 5 2014 TAP AG company, in compliance with paragraph 4.5, point 1, of Final Joint Opinion has submitted a proposal of Compliance Program, to ERE, AEEG and RAE authorities for ensuring the approval of this program;

**Appraising that:**

- The Regulatory Compliance Program is in conformity with the definitions of Final Joint Opinion identified above (letters a-d) and that above all forecasts any possible change in its content is subject to regulator's approval;
- The same attitude is shared and held from AEEG and RAE;
- It is necessary the approval of compliance program proposed according to paragraph 4.5 of Final Joint Opinion, attached to this decision, to guarantee the equal treatment of the participants in the first *Booking Phase*.

**Decided:**

1. To approve "the Regulatory Compliance Program" proposed from TAP AG on February 5 2014, attached to this decision.
2. Notifying Italian (AEEG) and Greek (RAE) Energy Authorities and TAP AG, for taking this Decision.
3. This decision enters immediately into force and is published in the Official Gazette;





Trans Adriatic Pipeline

# TAP AG Regulatory Compliance Programme

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## 1 Introduction

This Regulatory Compliance Programme (**RCP**) has been established by TAP AG to provide a binding internal framework to ensure that TAP AG as a whole, as well as its Employees, shall comply with the requirements as set out in section 4.5.1 of the FJO prior to its certification as an ITO in accordance with the Final Joint Opinion (**FJO**).

### 1.1 Scope of the Regulatory Compliance Programme

This RCP sets out measures taken by TAP AG to ensure that within the period running from its approval by the Authorities up until TAP AG's certification as an ITO in accordance with the FJO, any Discriminatory Conduct is excluded and that no Commercially Sensitive Information is communicated to the Shareholders. As required by section 4.5.1 of the FJO, it lays down in particular<sup>1</sup>:

- The person responsible for monitoring the RCP and reporting to the Authorities as required by section 4.5.1(iii) of the FJO;
- The duties and the rights of the Employees of TAP AG in the fulfilment of the purposes of the Regulatory Compliance Programme including the management of Commercially Sensitive Information as required by section 4.5.1(ii) of the FJO;
- Annex A sets out measures adopted by TAP AG to prevent Discriminatory Conduct in relation to participants in the Booking Phase of the market test, who are not shareholders in TAP AG as required by section 4.5.1(i) of the FJO;
- Annex A further includes the principles of tariff methodology and congestion management rules for the marketing of capacity by TAP AG as required by 4.5.1(iv) of the FJO;

## 2 Definitions

The following definitions apply throughout the full set of documents adopted by TAP AG for the purpose of fulfilling the requirements of section 4.5.1 of the FJO.

- a. Authorities: the national regulatory authorities of Albania, Greece and Italy;
- b. Booking Phase: the binding phase of the market test, as set out in the Guidelines for Management and Allocation of capacity to the Trans Adriatic Pipeline (TAP) Project According to Paragraph 6 of Article 36 of Directive 2009/73/EC;
- c. Booking Phase Guidelines: Guidelines for the Booking Phase as set out in the Guidelines for Management and Allocation of capacity to the Trans Adriatic Pipeline (TAP) Project According to Paragraph 6 of Article 36 of Directive 2009/73/EC;
- d. Booking Phase Notice: procedures for performing the Booking Phase as set out by TAP AG;

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<sup>1</sup> The following is based on the requirements of 'Functional Unbundling' of Article Art 9 (2) of the Gas Directive 2003/55.

- e. Certification Decision: the decision individually issued by each of the Authorities on TAP AG's application for certification, including a timetable for the implementation of the ITO model in accordance with the FJO;
- f. Commercially Sensitive Information: information that is available to TAP AG directly or indirectly in relation to the marketing of capacity in the TAP Pipeline, and any additional Commercially Sensitive Information which could provide a competitive advantage to TAP Shareholders in any relevant European market in the production or supply of natural gas;
- g. Discriminatory Conduct: applying dissimilar conditions to equivalent transactions with trading parties including Shareholders, thereby placing them at a competitive disadvantage;
- h. Employees: all personnel employed on the basis of a TAP AG employment contract and seconded personnel from Shareholders;
- i. Expansion Capacity: the total technical capacity of up to 10 bcm/year that can be built above the Initial Capacity;
- j. External Service Providers: any natural or legal person, other than the Shareholders and their subsidiaries, providing services to TAP AG;
- k. Final Joint Opinion (FJO): Final Joint Opinion of the Energy Regulators on TAP AG's Exemption Application dated 6 June 2013, granted by the Italian, Albanian and Greek national regulatory authorities pursuant to Directive 2009/73/EC;
- l. Functional Unbundling: organisational measures to avoid conflicts of interests in the Booking Phase<sup>2</sup>;
- m. Gas Directive: Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC;
- n. Gas Regulation: Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005;
- o. Initial Capacity: the total initially planned technical capacity of 10 bcm/year which has been exempted from regulated third party access, ownership unbundling and regulated tariff;
- p. Regulatory Compliance Programme (RCP): the compliance programme that sets out the unbundling measures undertaken by TAP AG for the period running from its approval until the full implementation of the ITO model in accordance with the FJO;
- q. Regulatory Compliance Officer (RCO): the compliance officer appointed by TAP AG in accordance with the Regulatory Compliance Programme;
- r. Shareholders: the shareholders in TAP AG;
- s. Start of Construction of the TAP pipeline: mobilisation of the main EPC contractors on the construction sites;
- t. TAP AG: Trans Adriatic Pipeline AG, a company incorporated under the laws of Switzerland whose head office is at Lindenstrasse 2, 6340, Baar, Switzerland. TAP AG undertakes the planning, development, financing, construction and operation of the TAP Pipeline and associated facilities;

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<sup>2</sup> TAP AG has based its approach on the concept of 'Functional Unbundling' as previously applied to TSOs under Article 9(2) of the Gas Directive 2003/55 and on the 'The Unbundling Regime' guidance note issued by DG Energy and Transport on 16 January 2004.

- u. TAP Network Code: the network code to be issued by TAP AG pursuant to the obligations set out in section 4.7.1 of the FJO;
- v. TAP Pipeline: the Trans Adriatic Pipeline;
- w. TAP Tariff Code: the code containing the final methodology for the implementation of the TAP tariff referred to in section 4.2.1 of the FJO, as approved by the Authorities;
- x. Technical Service Provider (TSP): a Shareholder and/or their subsidiaries providing services to TAP AG during project development and construction of the TAP Pipeline.

### **3 Implementation and monitoring of the Regulatory Compliance Programme**

#### **3.1 Regulatory Compliance Officer**

TAP AG has appointed a Regulatory Compliance Officer (**RCO**) with effect from March 2014, for the period up until its certification as an ITO in accordance with the FJO. The RCO shall monitor the adherence to the RCP and observe the legal obligations contained therein. The RCO is responsible for any adaptation or amendment of the RCP with the procedure agreed upon with the Authorities. Any review of the RCP shall be subject to the prior Authorities approval.

The RCO may attend all meetings of the management or administrative bodies of TAP AG, the board of directors and the shareholders meeting, and shall be present at all meetings that address matters relating to conditions for organisation of the Booking Phase and access to the network, in particular regarding tariffs, third party access, capacity allocation and congestion management procedures, transparency, balancing and secondary markets.

The RCO shall draw up measures to limit or, where necessary, prohibit access of Employees to TAP AG's systems for the recording, processing or storage of sensitive data.

The RCO shall have access to all the necessary information of TAP AG in order to fulfil its tasks such as files, documents and electronic data processing systems related to the marketing of capacity by TAP AG, particularly in relation to the Booking Phase.<sup>3</sup>

In ensuring the implementation of the RCP, the RCO shall be entitled to propose new measures and to require assistance of the management when checking and ensuring compliance of Employees with the RCP.

Starting from 2014, the RCO shall submit an annual report to the board of directors and to the Authorities on the measures taken for the implementation of the RCP; including any infringement occurred and the disciplinary measures taken.

#### **3.2 Validity period of the Regulatory Compliance Programme**

The RCP is valid from [date of approval Authorities]. The RCP shall remain valid and in force until TAP AG's certification as an ITO in accordance with the FJO.

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<sup>3</sup>More detailed competences of the RCO relating to the Booking Phase are set out in Annex A.



This RCP shall be binding on all management and Employees of TAP AG and to the extent applicable to its Shareholders.

The RCP will be published on the home page of the intranet and the internet website of TAP AG.

#### **4 Duties and the rights of Employees for the purposes of the Regulatory Compliance Programme**

All Employees shall be familiarised with the RCP by means of a regulatory compliance training programme. Employees shall confirm their adherence to the RCP by signing a written declaration of commitment by which they are also informed in writing that any infringement to the RCP shall result in disciplinary actions, including relocation and/or dismissals of the Employees. TAP AG shall provide evidence to the Authorities of these signed declarations of commitment prior to the start of the first Booking Phase.

TAP AG shall conduct specific and regular trainings on the RCP for all Employees and notably as part of the introduction programme for new Employees. Familiarisation with the RCP will also be provided to any new board members of TAP AG.

All Employees shall be obliged to actively support the RCO in its tasks and to provide the required information completely and faithfully. Employees shall bring any suspected infringements of the RCP to the immediate attention of the RCO.

#### **5 Internal guidelines to prevent communication of Commercially Sensitive Information**

1. As a general rule, Employees and management of TAP AG will not share or otherwise communicate Commercially Sensitive Information to its Shareholders. Such information will at least include:

- a) customer lists;
- b) prospective bidding plans;
- c) detailed information about pending bids;
- d) customer-specific information.

2. As a general rule, Shareholders will neither receive or share or otherwise communicate Commercially Sensitive Information in their activities relating to TAP AG, particularly if such information is potentially deemed by the competition authorities to lead firms to coordinate their behaviour. Such information will at least include:

- a) current or future commodity or capacity prices, fee schedules, pricing policies or formulas in so far as these are not determined by the TAP Tariff Code, as approved by the Authorities;

- b) current or future marketing strategies of TAP AG;
  - c) current or future profit margins or profitability targets on specific services or products offered by TAP AG;
  - d) detailed cost information about individual products, services or technology offered by TAP AG, unless already disclosed to third parties or already available in the public domain.
3. Shareholders, management and all Employees of TAP AG shall be obliged to preserve the confidentiality of the Commercially Sensitive Information during and after the termination of their employment or other legal relationship with TAP AG.
4. Shareholders (or their representatives)<sup>4</sup> who are required in the course of TAP AG business to attend meetings on a regular basis at TAP AG's premises and/or to engage in decision-making in relation to TAP AG's activities, shall confirm their adherence to the RCP by signing a written declaration of commitment. TAP AG shall provide evidence to the Authorities of these signed declarations of commitment prior to the start of the first Booking Phase.
5. If Commercially Sensitive Information can be presented in a manner that eliminates the competitive sensitivity, then it can be shared. For example, historical, aggregated, or coded information may be used to meet the Shareholders' objectives in executing the construction of the TAP Pipeline without disclosing sensitive details. All such exchanges shall be cleared in advance by the RCO and shall be limited to cases where a compelling business justification can be shown for exchanging that information.
6. Generally, and prior to TAP AG's certification as an ITO in accordance with the FJO, in any event, Shareholders, Employees and management of TAP AG are, at least, permitted to exchange the following types of information:
  - a) corporate financial and tax information;
  - b) accounting methods, information management;
  - c) regulatory compliance;
  - d) physical descriptions of offices;
  - e) value of assets;
  - f) data about particular Employees to the extent necessary to complete the construction phase;
  - g) employee benefits and human resources information.
7. The RCO shall verify that TAP AG acts in accordance with Article 16 of the Gas Directive and shall be responsible for drawing the attention of TAP AG's Shareholders, management and Employees to the relevant national legislation and sanctions in the event of non-respect of confidentiality rules.

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<sup>4</sup>As included on a list compiled by the RCO.

8. All documents made available to Shareholders shall be marked to indicate their confidential nature and where necessary to facilitate return of the documents.

# Annex A: Measures to prevent Discriminatory Conduct in the Booking Phase of the market test

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## 1. Introduction

The measures set out in this Annex are adopted to exclude Discriminatory Conduct in the Booking Phase. In particular, they are adopted to ensure that:

- Shareholders participate in the Booking Phase under the same terms and conditions applicable to other participants as required by section 4.5.1(i) of the FJO;
- no Commercially Sensitive Information relating to booking requests in the Booking Phase shall be communicated from TAP AG to its Shareholders;
- the principles underlying the tariff methodology and the congestion management rules that are followed by TAP AG in order to market capacity are applied without discrimination to all participants in the Booking Phase, as required by section 4.5.1(iv) of the FJO.

## 2. Measures to prevent Discriminatory Conduct in the Booking Phase

TAP AG will have all the necessary resources, including human, technical, physical and financial resources to organise and operate the Booking Phase independently from its Shareholders as required by section 4.5.1(i) of the FJO. All procedures relating to the Booking Phase will be conducted in restricted premises that cannot be entered by Shareholders. An independent server is used to handle all the correspondence and store the data related to the Booking Phase. This server can only be accessed by personnel employed on the basis of a TAP AG employment contract that are involved in the Booking Phase.

Information in relation to the Booking Phase procedures shall be simultaneously made available to all potential participants via the Booking Phase Notice, which shall also include information on the TAP Pipeline system, the products offered, as well as the amount of capacity available for booking.

The fact of having acted in accordance with the measures adopted to prevent Discriminatory Conduct in the Booking Phase shall never constitute a valid reason to remove or replace the managing director and/or any other member of the executive team by the board of directors<sup>5</sup>. Any decision to remove or replace the Managing Director and/or any other member of the executive team shall be duly notified by TAP AG to the Authorities in order to allow their verification of compliance with the objective of excluding Discriminatory Conduct in the Booking Phase.

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<sup>5</sup> *Footnote no. 5 is deleted due to confidentiality reasons.*

### **3. Rules on the provision and disclosure of information relating to the Booking Phase**

Commercially Sensitive Information relating to the Booking Phase is subject to Article 16 of the Gas Directive and the RCP, and in particular the rules on Commercially Sensitive Information as set out in section 4 of the RCP. In particular, confidential information relating to transactions for the allocation of capacity following the Booking Phase or any other information obtained and/or generated by TAP AG during the performance of its activities falling into the scope of the RCP, shall not be shared between TAP AG and its Shareholders, unless this is necessary for carrying out a specific-commercial transactions subsequent to the Booking Phase<sup>6</sup>. This information includes, inter alia, booking requests and the relevant data (e.g. price, volumes, etc.).

Where information must be shared with a particular Shareholder for the purpose of construction and further technical realisation of capacity requested in the Booking Phase, it shall be shared on a need to know basis and only if the Shareholder involved has confirmed its adherence to the RCP by signing a written declaration of commitment.<sup>7</sup>

Commercially Sensitive Information in relation to the Booking Phase shall be shared within TAP AG only with persons who need that information to the extent necessary to perform their legitimate tasks, provided that such persons have signed a non-disclosure agreement and agreed to adhere to the RCP. The use of the Commercially Sensitive Information by Employees for any other purpose exceeding the scope of their tasks may be subject to sanctions according to the applicable law.

The RCO shall verify that TAP AG acts in accordance with Article 16 of the Gas Directive throughout the Booking Phase. Employees shall inform the RCO immediately should a suspicion arise that Commercially Sensitive Information obtained in the course of the Booking Phase is being or will be misused in the context of sales or purchases of natural gas by Shareholders.

Confidential information relating to transactions for the allocation of capacity subsequent to the Booking Phase may otherwise only be disclosed by TAP AG or provided to third parties where required by law and in accordance with such law.

Additional measures to prevent access to certain data or to prevent that such data is transmitted to Shareholders may be applied if so required in accordance with the Booking Phase Guidelines as approved by the Authorities.

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<sup>6</sup> This sharing of confidential information is necessary when Shareholders or their subsidiaries participate in the Booking Phase and submit a binding booking request to obtain capacity in the TAP Pipeline.

<sup>7</sup> This situation relates to sharing of information between TAP AG and Shareholders, including Technical Service Providers (TSPs), that contribute to the construction and technical realisation of capacity requested in the Booking Phase. This information is unlikely to be confidential or commercially sensitive, as only aggregated information on requested capacity in an entry or exit point is required to realise the requested Expansion Capacity.

Following the finalisation of a Booking Phase and in accordance with the Booking Phase Guidelines as approved by the Authorities, the RCO shall inform the Authorities on the measures taken to avoid Discriminatory Conduct and any infringements thereof as well as on the related disciplinary measures taken.

#### **4. Principles for the marketing of capacity**

The principles abided by TAP AG for the marketing of capacity and the terms and conditions under which capacity can be allocated are further laid down in the Booking Phase Notice.

The principles for the TAP tariff methodology are set out in the TAP Tariff Code.

Congestion management rules and use-it-or-lose-it procedures are set out in the TAP Network Code, which shall be compatible with the provisions of the Gas Regulation and the European Network Codes of Article 8.6 of the Gas Regulation that are not in conflict with the terms of the FJO.

These rules and principles are applied without discrimination to all parties.