Joint Opinion of the Energy Regulators on TAP AG's Exemption Application

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This is a consolidated version resulting from the merging of

1. the original document entitled "Joint Opinion of the Energy Regulators on TAP AG's Exemption Application" which formed an integral part of the Italian, Greek and Albanian Exemption Decisions, as the former two were transmitted to the European Commission and the latter to the Energy Community Secretariat in early March 2013 and
2. Part 4 of the original document above as modified by
   - AEEG Deliberation 249/2013/R/GAS of the 6th of June 2013
   - RAE Decision n. 269/2013 of 12th of June 2013
   - ERE Decision n. 64/13.06.2013

   to comply with the Commission Decision [C(2013)2949 final] dated 16th of May 2013 and having taken note of the Opinion 1/2013 of the Energy Community Secretariat dated 14th of May 2013.

Autorità per l'energia elettrica e il gas (Italy)
Enti Rregullator I Energjise (Albania)
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Preface

On August 29th 2011, TAP AG submitted to the Italian Ministry of Economic Development and on August 31st 2011 to the Regulatory Authority for Energy of Greece (RAE) an "Exemption Application for *Trans Adriatic Pipeline*", as foreseen by Article 36 of the Gas Directive 2009/73/EC.

On September 1st 2011 TAP AG submitted to the Energy Regulatory Entity (ERE) of Albania an "Exemption Application for Trans Adriatic Pipeline", in accordance with Article 22 of the Gas Directive 2003/55/CE.

Considering that:

- The project Trans Adriatic Pipeline lies across the three countries and qualifies as an *interconnector*;
- Article 22 of the Directive 2003/55/EC, Article 36 of the Directive 2009/73/EC and national legislation require that, in the case where the infrastructure in question is located in the territory of more than one country, any decision on the TPA exemption should be taken jointly by the National Authorities of the countries concerned;
- Article 36 of the Directive 2009/73/EC and national legislation require that before granting an exemption a *Market Test* is performed. The purpose of the *Market Test* is to invite all potential users of the infrastructure to indicate their interest in contracting capacity before capacity allocation in the new infrastructure, including for own use, takes place;
- As the Italian legislation assigns to the Ministry the responsibility of granting exemptions, under a non-binding opinion of AEEG, the Italian Ministry invited AEEG[1] to define, jointly with Greek and Albanian Authorities, the procedures of the Market Test and provide an opinion to the Ministry;
- Directive 2009/73/EC is relevant for Italy and Greece as Member States of the European Union and it has been transposed into the relevant national legislation of each country;
- Directive 2003/55/EC is relevant for Albania as a Contracting Party of the Energy Community and it has been transposed into the national legislation;
- The Council of Ministers of the Energy Community has decided on October 6, 2011 that Directive 2009/73/EC and Regulation 715/2009 have to be implemented by all Contracting Parties by the year 2015.

The National Regulatory Authorities of Albania, Greece and Italy have jointly decided to review the TAP AG Application on the basis of Directive 2009/73/EC.

[1] Letter AEEG's ref. 9732 of 29/03/2012

The *Market Test* has been performed by TAP AG company, under Authorities regulation. In the Market Test, all potential users have expressed their interest in using the new transportation capacity, before the capacity is assigned.

This paper is the *joint opinion* of the Authorities, based on the Article 36.1 criteria of the Gas Directive and supported by both Market Test results and further considerations shared by the Authorities.

The paper is divided in four *Parts*.

Part 1 provides a description of the TAP project, according to the Exemption Application submitted by TAP AG, as enriched by information communicated to the Authorities in due course of the assessment of this application until the date of issuing of the present joint opinion. The description includes the list of the exemptions requested, the Authorities provisions, the summary of the first phase of the Market Test and a report of information deemed to be relevant for the opinion.

Part 2 includes some further analysis and considerations based on data acquired, such as an analysis of the impact of the project on the relevant markets and on the competition.

Part 3 contains the analysis of the Authorities, on how the criteria of Article 36.1 of the Gas Directive are fulfilled, supported by data and considerations in *Part I* and *Part II*.

Part 4 is the opinion of the Authorities on the Exemption Application and the terms and conditions under which the exemption should be granted.

Definitions and acronyms

The following definitions and acronyms are used in the present paper:

AEEG	the Italian energy authority *Autorità per l'energia elelttrica e il gas*
ERE	the Albanian energy authority *Enti RRegullator I Energjise*
RAE	the Greek energy authority Ρυθμιστική Αρχή Ενέργειας
the Authorities	jointly AEEG, ERE and RAE
TAP	the pipeline *Trans Adriatic Pipeline*
TAP AG	the company *TAP AG*
Gas Directive	the Gas Directive 2009/73/EC
Gas Regulation	Regulation 715/2009 of the European Parliament and the Council
Greek Law	Law 4001/2011 ΦΕΚΑ′ 179, 22.08.2011) of the Hellenic Republic
GTA	the Gas Transportation Agreement that shippers have to sign with TAP AG for entering into a transportation contract
Guidelines	the "*Guidelines for management and allocation of capacity to the Trans Adriatic Pipelines (TAP) Project, according to paragraph 6 of Article 36 of the Directive 2009/73/EC - PHASE I: invitation of interested Parties to express their interest in reserving capacity*" jointly approved by the Authorities in April 2012
Exemption Application	the "Exemption Application for *Trans Adriatic Pipeline*" submitted by TAP AG to Authorities, ref. Autorità per l'energia elettrica e il gas 29/08/2011 22591, Enti Rregullator i Energjise (ERE) Prot nr. 478 dt 1/09/2011, RAE Ref. I-143197/31.08.2011, on August 29th 2011;
Market Test	the process defined in Article 36.6 of the Gas Directive, to assess the interest of all potential users in contracting capacity before capacity allocation in the new infrastructure takes place
Project	the TAP project as a whole
Initial Capacity	the 10 bcm/year foreseen in Phase I of the Project (see §1.1.4)
Expansion Capacity	up to 10 bcm/year foreseen in Phase II of the Project (see §1.1.4)

Total capacity	The sum of the Initial and Expansion Capacity, up to a total of 20 bcm/year
Commercial Operation Date	The date on which TAP Pipeline will be completed and able to receive, transport and re-deliver natural gas
Shah Deniz II	The second phase of gas production project in the gas field of Shah Deniz (Azerbaijan)
bcm/mcm	billion cubic meters / million cubic meters

Part 1

The Project, facts and figures

1.1 The Project

In the following sections, an overview of the Project is provided, based on the information received by TAP AG in its Exemption Application and on later explanations, with a special focus on the aspects which are relevant for the exemption opinion. A schematic picture of the Project is shown in figure 1.1 below.

1.1.1 Origin of gas

The "Trans Adriatic Pipeline" is a major new project aimed to facilitate the transportation of gas produced in the second phase of the Azerbaijan gas field Shah Deniz (Shah Deniz II) from Greece to Italy and other European gas markets.

The second phase of Shah Deniz project foresees the building of offshore platforms, gas pipelines from sea to shore, as well as the expansion of Sangachal Terminal and South Caucasus Pipeline for the transportation of gas from Azerbaijan through Georgia to Turkey where it lies into the national grid of BOTAS Petroleum Pipeline Corporation. According to the Exemption Application, in Turkey, Shah Deniz Consortium is working to ensure the timely construction of all infrastructures necessary to transport the Azeri gas to the Greek border, through the existing Interconnector Turkey-Greece (ITG). This interconnector starts in Karcabey (Turkey) and ends in Komotini (Greece) where

Figure 1.1: TAP Project

is connected to the Greek system (owned and operated by DESFA). A gas metering station is located in Kipoi, close to the Turkish/Greek border. However, according to information provided to the Authorities by TAP AG in due course of the discussions for the Exemption Application, it seems very probable that gas from Azerbaijan will be transported through Turkey through a dedicated new infrastructure, the TANAP pipeline, which will deliver gas, among others, to the Turkish-Greek border. In this case, TAP will be directly connected to TANAP, thus bypassing the existing Interconnector Turkey-Greece. As will be further explained in §2.2.2 below, this will not pose any additional difficulties in the regulatory treatment of TAP in Greece and will also increase the available interconnection capacity between the Turkish and Greek networks.

TAP AG has also declared to the Authorities that gas from sources other than Shah Deniz II may also be received, either from the beginning of its operation, or at a later stage.

According to TAP AG's Exemption Application, sanctioned gas will not be allowed to be transported through TAP.[1]

1.1.2 Location of the infrastructure

According to the information provided in the Exemption Application, the new pipeline will be approximately 800 km long: it will start in Komotini (Greece), cross Greece, Albania and the Adriatic sea and finally will reach Italy in the Puglia region.

1.1.3 Entry and Exit points

According to the Exemption Application, the TAP entry point will be located at Komotini (Greece), so for the first 87 km from the Turkish/Greek border to Komotini the gas will be transported by the Greek section of the existing ITG interconnector. In Greece, TAP AG's shareholders have already submitted, in June 2008, an application for the reservation of transportation capacity at the existing Greek–Turkish Interconnection point. This request has been amended in April 2011, to reflect the addition of another shareholder in TAP AG, as well as the provisions of the revised Greek Network Code, put then in operation. According to their Exemption Application, TAP AG intends to further revise these requests, following the outcome of the exemption decision. In order to ensure reservation of sufficient capacity for its shippers at the delivery point of Kipoi (Greek/Turkish border), additional capacity upgrade will be required in the existing ITG. TAP AG is assuming to undertake additional investment or otherwise contribute to the construction costs of the section Kipoi-Komotini, both in the Greek and Turkish part of the border.[2] In Italy, a new entry point on the Italian network must be built to accommodate the gas coming from the new pipeline. The foreseen entry point will be located in San Foca, near Lecce. Not only a new flange must be built on the SNAM Rete Gas system, but also an expansion of the inner part of the network is needed to allow the new gas flowing from south to north of Italy. TAP AG signed on the 14th December

[1] For a definition of "sanctioned gas" and further details see point 1 of §4.7.

[2] §1.1 of the of the Exemption Application

2007 a contract with SNAM Rete Gas for the construction of tie-in facilities to connect TAP to the Italian grid[3]. TAP AG has also declared that[4] according to the development of the gas markets in the South East European region, TAP is designed to enable implementation of additional off-take points along the route if it is technically viable and sufficient demand is available to make the implementation economically feasible.

1.1.4 Capacity

TAP is planned to be built in stages. According to the Exemption Application, the first stage (hereafter: "Phase I") of a capacity of 10 bcm/year (hereafter "Initial Capacity") is scheduled to be put into operation by 2017 (1st Q 2017). The next construction stage(s) could increase the pipeline capacity up to a Total capacity of 20 bcm/year.

According to the Exemption Application, TAP is aligned to the upstream developments in terms of both volumes and time schedule, that is to say the entire capacities will be implemented in at least two phases depending on market demand. Capacity additional to the Initial Capacity, and up to a further 10 bcm/year (hereafter: "Expansion Capacity") can be realised in an economically efficient manner, by adding new compressor stations on the same pipeline.

1.1.5 Physical reverse flow

According to the Exemption Application, in order to comply with the requirements of the Regulation 994/2010 of the European Parliament and the Council concerning measures to safeguard security of gas supply, TAP will incorporate the minimum technical arrangements that allow — under planned or emergency situations — for the gas flow to be reversed (hereafter: "Physical Reverse Capacity") thus allowing the transportation of gas from Italy to Albania and Greece.

In addition to benefiting Albania, Greece, Italy as well as other European gas markets in the forward flow, TAP could also provide additional security of supply for Greece as well as the South East European region, allowing for gas to be sourced from the Italian market to Greece and the SEE (in the event of a supply disruption affecting gas to enter Greece via LNG, Bulgaria or Turkey).

1.1.6 Timing

At the time of the writing of this opinion, as far as it is predictable and according to the Exemption Application and TAP AG's statements, construction is forecasted to commence in 4Q 2014 and the pipeline is expected to be operational as of 1Q 2017 and in any case in line with the first Shah Deniz II gas deliveries, as indicated in ENTSOG European Ten Years Network Development Plan 2010-2019.

[3] §2.4.3 of the Exemption Application

[4] §2.4 of the Exemption Application.

1.2 Players involved in the Project

The following sections give a picture of the current stakeholders or market participants who are, directly or indirectly, involved in the Project.

1.2.1 TAP AG and its shareholders

According to the Exemption Application, the TAP project is being developed by TAP AG, a single purpose company with no other interest than the development, construction, ownership and operation, including marketing of capacity and maintenance of TAP Project. TAP AG is a consortium of three major European energy players with established track records: Statoil ASA (42,5%) EGL AG (42,5%) E.On Ruhrgas AG (15%). As declared by TAP AG, the Project is open to new equity partners.[5] According to the Exemption Application all stakeholders intend to sublet (to a "sublessee") all or part of the unused capacity or to assign (to an "assignee") all or part of their obligation related to the exempted capacity to third parties[6].

1.2.2 Shah Deniz Consortium

According to the Exemption Application the shareholders of TAP AG have specifically designed TAP to transport gas available from Shah Deniz II. In this context is also relevant to provide an overview of Shah Deniz Consortium and its relation with TAP AG.

The Parties to Shah Deniz Production Sharing Agreement are BP (25.5%), Statoil ASA (25.5%), the State Oil Company of Azerbaijan Republic (SOCAR)(10%), AOA LUKOil (10%), NICO (10%), Total SA (10%), TPAO (9%). In the Shah Deniz Consortium, Statoil ASA is chairing the Gas Commercial Committee which is responsible for the commercialisation of the gas produced by the Shah Deniz II field.

Shah Deniz Stage I commenced production on December 2006. The production of gas is approximately 8 bcm/year and it is sold to Azerbaijan, Georgia and Turkey. Shah Deniz Stage II is likely to be on a similar or larger scale than Stage I. The development of the field is foreseen by Shah Deniz Consortium to contribute to cover domestic demand for gas in Azerbaijan, Georgia and Turkey and to supply gas to markets in the EU, including Italy.

1.3 TAP AG's Exemption Application

In this section, a summary of information relevant for the exemption is provided.

1.3.1 The requested exemptions

TAP AG requested the following exemptions:

[5] §1.3 of the Exemption Application
[6] §7.1.2 of the Exemption Application.

1. Related to the Initial Capacity of 10 bcm/year:
   (a) from the requirement of TPA (Article 32 of the Gas Directive);
   (b) from regulated tariffs (Article 41.6, 41.8, 41.10 of the Gas Directive).

   The above exemptions are meant for a period of 25 years from the Commercial Operation Date, equivalent to the duration of the long-term contracts.

2. In respect of the possible realization of an Expansion Capacity in Phase II:
   (a) from regulated tariffs (Article 41.6, 41.8, 41.10 of the Gas Directive).

   The above exemption is meant for the same period for which exemption for the Initial Capacity is applied for and granted.

3. Irrespective of Initial or Expansion Capacity:
   (a) from regulated tariffs for Reverse Flow (Article 41.6, 41.8, 41.10 of the Gas Directive);
   (b) from the unbundling provisions of the Third Gas Directive (Article 9);
   (c) from the provisions of Gas Regulation (with exception of Article 19.4).

   The above exemptions are meant for a period of 25 years from the Commercial Operation Date, equivalent to the duration of the long-term contracts.

1.3.2 Products offered

TAP AG in its Application distinguishes between the following capacities:

- Initial Capacity
- Expansion Capacity
- Reverse Capacity

TAP AG is going to allocate Initial capacity to its shareholders through *ship-or-pay* contracts divided *pro rata* on the values of the shares held. As explained in §1.3.6 and §1.3.3 the full long-term allocation of Initial Capacity ensures to TAP AG the bankability of the current design of TAP. This means that a shipper who has signed a *ship-or-pay* contract will pay for booked transportation capacity irrespective of actual use.

As far as the Expansion Capacity is concerned, it will be offered to all interested parties in full to the market, at the TAP Tariff, in a non-discriminatory manner and on the basis of prevailing European capacity management rules and prevailing regulation on capacity allocation. The Expansion Capacity is offered as firm capacity products at the applicable TAP Tariff and on the basis of contracts with a duration no longer than the exemption period as requested in the Application, that is 25 years from the Commercial Operation Date.

As far as the Reverse Capacity is concerned, TAP will offer it to the market.

1.3.3 TAP AG's financial model

TAP AG has provided in the Exemption Application a description of its business model. The model assumes that the project development funding is provided by the shareholders up to the end of the detailed engineering stage, while further external project financing is required for the construction and commissioning of the pipeline.

External investors such as banks or financial institutions will provide project financing only if the Project can demonstrate stable and predictable cash flows sufficient to service principal and interest payments and provide margin to cover economic downside scenarios.

TAP AG has identified several risk factors associated with the project:

Financial risk – To face financial risks, this major infrastructure project is built on the back of a long-term ship-or-pay contracts of sufficient duration to repay debt and compensate investors for the risks they take. Moreover, the exemption from TPA along with the stability of tariffs, guarantees to yield a stable and durable revenue stream which will satisfy the financial institutions that the project is bankable.

Regulatory, political and legal risks – TAP is a project which will cross three countries, which are at different stages of gas market maturity, different stages of development of their energy regulatory framework and are obliged to implement the European legislation on Energy in different time paths, as implied by the differences in the implementation of the third energy package for the EU Member States and the the corresponding provisions of the Energy Community Treaty. Therefore, national regulations can change with significant impact on the economics of the Project. This increases not only the complexity of the Project, but also the risk that governing national legal frameworks for TAP would result in different outcomes for the different parts of the pipeline.

Competing infrastructures – TAP is planned to transport gas from the Caspian Region. Thus, it is necessary for the shareholders of TAP AG to safeguard that they will be in position to offer to future buyers and sellers of Shah Deniz II gas transportation contracts through TAP which are competitive to those offered by projects which are competing TAP for the same gas volumes.

TAP AG considers an *IRR* index of [*omissis*]after taxes as an appropriate rate of return for its investments and the risks associated with it.

In the proposed model, the target *IRR* is ensured by the Initial Capacity. The target *IRR* must also be considered as *capped*. This means that any additional income from selling the Expansion Capacity or the Reverse Capacity reduces the tariff for all the shippers of TAP AG of an amount that keeps the *IRR* as a constant.

For this reason TAP AG has not included, in its financial model, the revenues coming from such additional services. As they are dependant on market demand which is highly uncertain they cannot guarantee a revenue stream.[*omissis*]

With the proposed model they are also irrelevant with respect to the actual level of cash-flow.

1.3.4 Costs

[*omissis*]

1.3.5 Scenarios

Detailed scenarios analysis is in §4.7 of Annex A. TAP AG considers, first of all, a *base case scenario* where 10 bcm/year of capacity is long-term contracted for 25 years period and the tariff is set to ensure the target revenue.

In a *second scenario*, the same capacity for the same period is offered at a regulated price. This means that the revenues are calculated using the current *Rate of Return* according to the regulation in force in Italy and Greece. For Albania, as there is no regulation on gas infrastructures, some assumption have been used.

In a *third scenario*, only 80% of the Initial Capacity of 10 bcm/year is exempted, while the remaining *quota* (20%) is offered to third parties. In this case the tariffs for the exempted *quota* are the same as the base case scenario, while for the TPA *quota* the tariffs are the same as in the regulated scenario.

In a *fourth scenario*, TAP AG considered the case of a limitation of the exemption period to 20 years instead of 25.

TAP AG concludes that the Project is viable only if the whole 10 bcm/year of Initial Capacity is long-term contracted for 25 years period. So TAP AG will offer its shareholders long-term contracts to secure, through the uniform tariff, a return on their investments.

TAP AG also outlined also that if no TPA exemption were to be granted, then 100% of the capacity would be offered to the market at a varying national regulated tariff. TAP AG's main concern in this scenario is the unpredictability of the future market behaviour and the utilisation rate of the pipeline. TAP AG would bear the entire risk of non-use which means that revenues are not secured and can vary over time. TAP AG showed that also assuming a 100% of the utilisation rate, potential changes in the regulatory environment (especially related to tariff methodologies, since regulated WACC are continuously under review in the three separate countries) and the resulting impact on cash flows are not sufficiently robust to satisfy lender's requirements.

TAP AG argues also that, based on its analysis, if the exemption period is shortened (i.e. 20 years), there would be an outstanding debt for the remaining five years which is a high risk, unacceptable for project finance lenders.

1.3.6 Tariffs

TAP AG proposes that all shippers pay a uniform *TAP Tariff*, irrespective of whether they use forward or reverse capacity products.

TAP AG's argumentation in favour of a uniform tariff rather than a differentiated one, is that initial shippers would suffer an economic disadvantage in respect of shippers of Expansion Capacity. In other words, potential shippers would not sign a long-term

GTA if they knew in advance that their competitors could transport gas at a later stage through Expansion Capacity for a shorter period at a lower tariff.

TAP Tariff calculation methodology is described in the Exemption Application and refined in subsequent documentation. For the purposes of the present Opinion, it is worthy to repeat the main principles here.

The uniform tariff proposed by TAP (hereafter "TAP Tariff") is calculated so that all investments costs are recovered and the minimum requirement from lenders and shareholders are fulfilled. The resulting targeted revenue is then distributed to all firm capacity products that can be sold.

According to the Application, as the technical capacity of TAP was meant to be allocated in two phases, an initial TAP Tariff is calculated to cover all costs of realising the initial 10 bcm/year and recover also the pre-investments undertaken for the Expansion Capacity. The formula to calculate the TAP Tariff when only the Initial Capacity is built is the following:

$$TAPTariff_{Initial} = \frac{TargetedRevenue}{InitialCapacity} \tag{1.1}$$

In case that Expansion Capacity is developed or Reverse Capacity is booked, the TAP Tariff is re-calculated following the same methodology, taking into account the additional costs of the Expansion Capacity.

In case Reverse Capacity is booked, the additional revenues above Target Revenue are redistributed and therefore the expected result of the distribution over all the shippers is a global lowering of the tariff.

$$TAPTariff_{Adjusted} = \frac{TargetedRevenue}{InitialCapacity + ExpansionCapacity + ReverseCapacity} \tag{1.2}$$

According to the TAP Tariff methodology:

- the Tariff should be adjusted annualy based on an escalation formula to account for inflation;
- the fee structure for forward flow gas transportation through the Trans Adriatic Pipeline follows an entry-exit charge system. In specific, the calculated Target Revenue for any given period is broken down to an entry fee and an exit fee component under a 50%-50% split. The entry fee is allocated in proportion to all volumes entering the pipeline, unrelated to the distances for which such volumes will be shipped. The exit fee is allocated to volumes exiting the pipeline at various exit points, the respective allocations being done in proportion to volumes and travelled distance;
- TAP tariff as outlined above, would apply also to short term products, as a floor price to the extent products are offered through auctions. Further provisions could be put in place for products with a duration shorter than one year.

- in TAP AG's proposal, the TAP tariff would apply also to short term products, as a floor price to the extent products are offered through auctions.
- the exact level of tariff shall be finally determined at a given moment, with changes thereafter only coming from annual escalation and expansion cases. Prior to that moment, however, a Tariff adjustment mechanism will apply to share risk between Shah Deniz Consortium and TAP. After the completion of a binding offer to Shah Deniz Consortium, containing a fully specified tariff model with all commercial parameters as well as cost estimates relating to the technical scope described in the Decision Support Package, the Tariff Adjustment Mechanism shall define how changes between Planned Project Costs documented in the and Tariff Final Costs will revise the cost estimate underlying the tariff calculation at the moment when tariffs were determined. The allocation of risk for changes in the Planned Project Costs will be based upon a broad principle that TAP will take Technical Risk while Shah Deniz Consortium accepts market risk, as well as the risk of certain changes outside TAP AG's control.

In conclusion, according to the Application, TAP AG is going to offer firm capacity to all interested parties on a non-discriminatory and long-term basis at uniform tariff. In other words, shippers being allocated any capacity either Initial or Expansion, will be charged with the same tariff to allow cost recovery and compensation for pre-investment risk for the whole pipeline.

1.3.7 Unbundling

TAP AG motivates its request of exemption from unbundling provisions on the ground of its willingness to own and operate the transmission assets. Exemption from Article 9.1 of Gas Directive is needed to allow TAP AG's shareholders to assert their right of control over TAP AG and manage the risks inherent in this Project. TAP AG declares that without legal certainty in this respect the investors would be unable to quantify the risk to be assumed by them in implementing the Project.[7]

1.4 The *Market Test*

1.4.1 The designed process

According to the provisions of Article 36.6 of the Gas Directive, prior to granting an exemption, the authorities concerned have to decide on the rules for the management and allocation of the capacity to the Project. To this end, a Market Test should be implemented, inviting all potential users of the infrastructure, including its shareholders, to indicate their interest in contracting capacity.

During the month of April 2012, the Authorities approved the Guidelines for the management and allocation of capacity. The Guidelines defined:

[7] §1.1 of the Exemption Application.

1. The structure of the Market Test to be carried out in two phases:
   (a) Expression of Interest phase;
   (b) Booking phase.
2. A detailed procedure for performing the Expression of Interest phase.
3. The general principles for carrying out the Booking phase should such a necessity arise after the implementation of the Expression of Interest phase.

The Expression of Interest Notice was proposed by TAP AG and jointly approved by the Authorities in May and early June 2012, according to the procedure of §3.1 of the Guidelines.

The Expression of Interest phase of the Market Test was launched on the 15th of June 2012 and the deadline for the Expression of Interest phase was the 15th of August 2012. TAP AG has submitted to the Authorities their Report on the outcome of the Expression of Interest phase, the 30th of August 2012.

According to the Guidelines, the Expression of Interest phase neither binds participants to book the capacity for which they have expressed their interest nor binds TAP AG to offer it. Participation to the Expression of Interest phase is a prerequisite to access the Booking phase. The Guidelines foresee that should a Booking phase take place, separate guidelines will be issued by the Authorities specifying the procedure, the available products as well as the amount of capacity available for booking.

The Guidelines provide that following the conclusion of the Expression of Interest phase and giving due consideration to the report provided by TAP AG, Authorities shall assess if criteria set by Article 36.1 of the Directive were fulfilled and, if so, they would express a positive opinion upon granting the exemption. In expressing a positive opinion, specific consideration will be given to the need of imposing conditions, according to Article 36.6 of the Directive. Conditions may concern, among others, the duration of the exemption and non-discriminatory access to the infrastructure, taking into account specific national circumstances in the three Host Countries and the technical and economic aspects of the Project. The positive opinion may also be conditional on the obligation on TAP AG to offer Expansion Capacity in the Booking phase and to build it if allocated, in so far as it is technically and economically feasible.

1.4.2 General principles of capacity allocation and management

Although the Guidelines do not specify the procedure and rules of the Booking phase (i.e. detailed rules, products, tariffs and duration of contracts for capacity allocation, as well as mechanisms to deal with cost-overruns and penalties applied to TAP AG if capacity is not delivered on time) they do set out the general principles for capacity management to be applied should the Market Test proceed to the second stage. In detail the Guidelines set out the following rules:

1. in the Booking phase capacity is allocated through auctions;

2. tariffs applied to users are cost reflective and non discriminatory;

3. capacity management will be applied also according to Congestion Management Procedures, *use-it-or-lose-it* arrangements, secondary capacity trading arrangements, balancing regimes, capacity overruns, nomination and re-nomination rules compliant with relevant EU provisions as they will be established, amended or integrated by comitolgy according to the procedure established in Articles 6, 7, 23 of the Gas Regulation;

4. TAP AG has to define a network code compliant with the rules mentioned above, subject to Authorities' approval. The network code will provide for a harmonized regime for capacity allocation procedures for the entire route of the TAP project.

1.4.3 Participation in the Expression of Interest phase

According to the Guidelines, in the Expression of Interest phase all interested parties including TSOs and relevant institutions (governments, ministries of EU Member and non-Member States, financial institutions), as well as market operators, were invited to express their interest, in contracting capacity or in connecting to the infrastructure and were asked to submit data and information needed by the Authorities to assess the compliance with the criteria set in Article 36.1 of the Directive.

1.4.4 Object of the Expression of Interest

When expressing their interest, participants had to indicate, at least:

1. the transportation services they were interested in;

2. the type of service (firm/interruptible), start date, duration and the amount of capacity for each service.

Participants in the Expression of Interest phase were allowed to request starting dates and duration of the services different from the ones proposed by TAP in their Exemption Application.

Furthermore, participants were allowed to indicate their interest in services other than the ones specified in the Expression of Interest notice and to indicate appropriate modifications to TAP AG's proposal that would better accommodate their needs, such as:

1. additional intake and off-take points to be built along the entire pipeline's proposed route or located elsewhere from the original project;

2. different starting and ending date of the transportation services or duration;

3. interruptible services.

Participants could also indicate the scope of the requested modifications should they wish to do so (e.g. to serve countries in the vicinity of the proposed project route, from other intake and off-take points).

Applicants were requested to copy their application submitted to TAP AG to the Authorities. Further, in order to preserve confidential and commercially sensitive information, applicants were requested to include to the Authorities' copy only, the following information:

1. the upstream and downstream transportation systems they will rely upon;
2. whether they already had capacity booked on these systems or transportation contracts coherent with the required capacity;
3. source and origin of gas; in particular, applicants had to declare if the requested capacity is to transport gas from Shah Deniz phase II;
4. status of the agreements with upstream suppliers (already effective, MOU, other).

1.4.5 Market Test outcomes

1.4.5.1 Participants

Nineteen (19) companies, [*omissis*] completed the Expression of Interest Registration form provided with the Expression of Interest Notice and thus formally expressed interest for capacity in TAP. [*omissis*] most were energy traders and suppliers. [*omissis*]

In addition to the registered participants, the [*Entity*] also participated in the Expression of Interest phase by submitting an "institutional expression of interest" as foreseen in §1.1. of the Expression of Interest Notice published by TAP AG and §6.6 of the Guidelines. [*omissis*]

1.4.5.2 Products requested and related quantities

Long-term forward capacity, exit point in Italy – The main interest expressed (13 out of 20 participants [*omissis*]) relates to long-term forward capacity from the planned TAP Entry Point (Komotini) to the planned TAP Exit Point (Melendugno), subject to ship-or-pay gas transportation agreements from TAPs Commercial Operation Date until 2036 to 2042. The total capacity requested for this particular product sums up to circa 40 bcm/year. Two participants (requesting a total of capacity of 3.29 bcm/year) indicated that they would be also willing to consider commencement dates for the shipment of the natural gas other than TAPs Commercial Operation Date and also interest in signing GTAs of duration other than 25 years, without however specifying the duration they were interested in.

Four participants also applying for this product and requesting a total of capacity of 1.64 bcm/year (4% of total capacity requested), have indicated their interest on GTAs of duration shorter than that proposed by TAP (5, 10, 15 or 20 years

N°	Participants % of participants	Capacity bcm/y	Capacity % of gas	Duration	Source	Interest in obtaining secondary market
11	55%	36.41	78%	until 2042	79% SDII, 22% SDII and others, 3% not specified	No
1	5%	xx	4%	until 2036	100% SDII	No
1	5%	xx	4%	20 years	100% SDII and others	No
4	20%	1.64	4%	5, 10, 15, 20 years	69% SDII, 31% not specified	Yes
				Summary		
17	85%	41.50	89%	96% 18-25 years	73% SDII, 23% SDII and others 4% not specified	96% primary market

Table 1.1: Long-term forward capacity, exit point in Italy

as opposed to 25) and their interest in acquiring this product on the secondary market.

Thus the total long-term capacity requests from the planned TAP Entry Point to the TAP Exit Point sums up to 41.50 bcm/year. All participants have indicated that they would be interested in obtaining the capacity from TAP's Commercial Operation Date.

A summary of the requested long-term forward capacity with exit point in Italy is shown in Table 1.1.

Long-term forward capacity, exit point in Albania – The total forward capacity requested from TAP's Entry Point (Komotini) to an indicated Exit Point in Albania (Fier) is 1.45 bcm/year (3% of the total forward capacity requested). Explicit long-term capacity requests amount to 0.4 bcm/year. One interested participant ([*Entity*]) requesting capacity of xx bcm/year stated willingness to consider other alternatives in the duration of the GTA, if offered. Only 0.05 bcm/year were requested for a 5 year contract.

Except for one of the participants ([*Entity*]) who explicitly declared interest to supply Albania with gas from Shah Deniz II as well as interest in obtaining capacity through the secondary market, all other participants interested to ship gas to an Exit Point in Albania ([*Entity*], [*Entity*], [*Entity*]) neither provided information on the source of gas nor specified whether they would be interested in also considering the possibility of obtaining capacity in the secondary market.

Interest for a second Exit Point in Albania was expressed also for the location [*omissis*]

A summary of the requested long-term forward capacity with exit point in Albania is shown in Table 1.2.

Long-term forward capacity, exit point in Greece – Interest expressed for forward capacity from the planned TAP Entry Point (Komotini) to one or more Exit Points in Greece was expressed by five participants requesting a total of 3.52 bcm/year (8% of total forward capacity requests). Two participants (2.12 bcm/year) expressed their interest for ship-or-pay gas transportation agreements with durations of over 20 years. Three participants (1.4 bcm/year) have declared that they could consider GTAs of shorter duration (5, 10, 15 years or in any case durations alternative to the 25 years offered by TAP in the Exemption Application). Three participants have indicated their interest in obtaining forward capacity from the secondary market. These requests amount to circa 50% (1.8 bcm/year) of the total capacity requested for this product.

[*omissis*]

Table 1.3 provides a summary of the long-term forward capacity from the planned Entry Point of TAP (Komotini) to one or more exit points in Greece.

Also a summary of the requested forward capacity by source of gas contract duration is provided in Table 1.4.

Reverse capacity, Exit point in Albania – The total reverse capacity requested from TAP's Exit Point (Melendugno) to an indicated Exit Point in Albania is 1.44 bcm/year (13% of the total reverse capacity requested). One interested participant ([*Entity*]) requesting capacity of xx bcm/year stated willingness to consider other alternatives in the duration of the GTA if offered. Another participant ([*Entity*]) requested xx bcm/year under 5-10 years contracts.

Reverse capacity, Exit point in Greece – The total reverse capacity requested from TAP's Exit Point (Melendugno) to an indicated Exit Point in Greece is 9.53 bcm/year (87% of the total reverse capacity requested, 5 participants). Over half of this capacity [*omissis*]to be used in the case of emergency.

Based on this statement, and also on the fact that [omissis] as outlined in §2.2.2, it may be argued that participants are at least equally interested in physical as well as virtual (commercial) reverse flow.

	Participants	Capacity		Duration	Source	Interest in obtaining secondary market
N°	% of participants	bcm/y	% of gas			
3	15%	1.40	3%	until 2042	100% not specified	No
1	5%	xx	<0.5%	5 years	100% SDII	Yes
				Summary		
4	20%	1.45	3%	∼100% until 2042	3% SDII, 97% not specified	∼100% primary market

Table 1.2: Long-term forward capacity, exit point in Albania

N°	Participants % of participants	Capacity bcm/y	Capacity % of gas	Duration	Source	Interest in obtaining secondary market
2	10%	2.12	5%	20 years	65% SDII 35% SDII and others	No
1	5%	xx	2%	until 2042	100% not specified	No
1	5%	xx	1%	5,10,15 years	100% SDII	Yes
1	5%	xx	<0.5%	5 years	100% SDII	Yes
				Summary		
5	25%	3.52	8%	90% 20 years or more	51% SDII, 21% SDII or others 28% not specified	90% primary market

Table 1.3: Long-term forward capacity, exit point in Greece

[*omissis*] Virtual reverse could also be relevant in the case of an emergency as the amount of gas per hour requested [*Entity*] is almost half the technical hourly capacity of the TAP pipeline, even if only the Initial Capacity design is considered, so that in principle, virtual reverse flow would also be possible even in an emergency situation provided that there is flow in the TAP pipeline in the forward direction.

Three of the remaining participants ([*Entity*], [*Entity*], [*Entity*]) who have expressed interest in reverse capacity with an exit in Greece (circa 2.47 bcm/year, 10-15% of the pipeline's technical capacity at the Initial Capacity design in the forward direction) have indicated no interest for the same product in the forward direction. In their applications two of the three companies (2.3 bcm/year) clearly state their plans of sourcing gas from their portfolio in the Italian market while the third does not specify the source of gas. Thus it may safely be argued that all three participants could be interested in a commercial reverse flow only.

Finally the fifth participant ([*Entity*]) has requested both forward and reverse flow capacity with an Exit point in Greece, [*omissis*] so that the participant would be certainly interested in virtual reverse flow but also potentially in physical reverse in the extreme case of an emergency,[*omissis*]

A summary of the requested reverse capacity is shown in Table 1.5.

Short term products – Short term products, as meant by common understanding (up to 1 year), were not requested. As Table 1.4 shows, the request for the shortest product is a five year one. The shortest term products are forward capacity from Komotini to Melendugno, but optionally also to an Exit Point in Albania or Greece and they are all requested as secondary capacity products.

Entry and Exit Points – No additional Entry Points were requested, while requests requests on two Exit Points in Albania, and three Exit Points in Greece (Western Macedonia, Nea Mesimvria and Komotini) were submitted.

There are requests for reverse flow with off-take points both in Albania and Greece, however most of the participants that have indicated interest for reverse flow ca-

Source	Company name	Capacity [bcm/y]	Duration
Shah Deniz II (explicit indication)	[*Entity*]	xx	18-25 years [*omissis*]
	[*Entity*]	xx	25 years (until 2042)
	[*Entity*]	xx	25 years (until 2042) but consider alternatives
	[*Entity*]	xx	25 years (until 2042)
	[*Entity*]	xx	25 years (until 2042)
	[*Entity*]	xx	25 years (until 2042)
	[*Entity*]	xx	5,10 or 15 years
	[*Entity*]	xx	10-20 or 25 years (until 2042)
	[*Entity*]	xx	5, 10, 15 years
	[*Entity*]	xx	20 years
	[*Entity*]	xx	25 years (until 2042)
	Total from SD II	*32.1*	
Shah Deniz II and other sources	[*Entity*]	xx	20-25 years (until 2042)
	[*Entity*]	xx	20 years
	[*Entity*]	xx	25 years (until 2042)
	Total from SD II and other sources	*10.50*	
No indication	[*Entity*]	xx	25 years (until 2042) but could consider alternatives
	[*Entity*]	xx	not specified (assumed as TAP: 25 years until 2042)
	[*Entity*]	xx	25 years (until 2042)
	[*Entity*]	xx	5-10 years
	Total with no indication	*3.8*	

Table 1.4: Long-Term Capacity requests by source of gas

pacity, what is of importance is to receive the gas delivered at the specified Exit Point, while it is irrelevant whether it will come by forward or reverse flow.

1.4.6 TAP AG commitment to release capacity to Shah Deniz II buyers

In a communication with the Authorities, following the conclusion of the Expression of Interest phase of the Market Test, TAP AG is also guaranteeing that[8]:

> "[...]*the capacity other than the capacity to be used by TAP's shareholders for shipping of Shah Deniz gas will be re-allocated to other buyers of Shah Deniz gas, once the Shah Deniz gas buyers are selected, and prior to FID. The Existing Shareholders and the Potential Shareholders of TAP are ready to sign an Undertaking through which they commit to release the capacity that they will not use for shipping of Shah Deniz gas and enabling TAP to offer it to all other buyers of Shah Deniz gas.*"

[8]Letter sent on the 4th of October to AEEG, ERE, RAE

Exit point	Company name	Capacity [bcm/y]	Contract duration
Greece	[*Entity*]	xx	until 2042
	[*Entity*]	xx	until 2042
	[*Entity*]	xx	20 years
	[*Entity*]	xx	20 years
	[*Entity*]	xx	20 years
	[*Entity*]	xx	5-10 years
	Total exit Greece	*9.55*	
Albania	[*Entity*]	xx	20 years
	[*Entity*]	xx	20 years
	[*Entity*]	xx	5-10 years
	Total exit Albania	*1.43*	

Table 1.5: Reverse flow capacity requests by exit point

According to TAP AG, this is a major factor in the final selection of TAP as an export route to Europe by Shah Deniz Consortium and therefore a major milestone in the TAP Project.

1.4.7 Additional information on Turkish infrastructures

Turkey and Azerbaijan entered into the so called *Turkey and Azerbaijan Gas Deal.* Within this Gas deal, a protocol of the sale of Shah Deniz II gas to Turkey and its transit to Turkey was signed between BOTAŞ and SOCAR on April 26th, 2010. Subsequently, two Memoranda of Understanding were signed between MENR of Turkey / MIE of Azerbaijan and BOTAŞ / SOCAR concerning the gas transit through Turkey on the 7th of June, 2010.

"*An Intergovernmental Agreement relating to the sale of Shah Deniz Phase II gas to Turkey and the transit passage of natural gas originating from Azerbaijan across the territory of Turkey and the development of a standalone pipeline for the transportation of natural gas across the territory of Turkey*" together with the commercial transit agreements between BOTAS as the transmission system operator and the Shah Deniz Consortium as the shipper were signed on October 25th of 2011.

The Intergovernmental Agreement represents two options, in which option 1 foresees a transportation of 10 bcm/year Shah Deniz Phase II gas through the Turkish National Transmission System owned by BOTAŞ with an upgrade of the system; and option 2 foresees construction of a new standalone pipeline (TANAP) that transports gas originating from, or transited via Azerbaijan. Regarding the second option — TANAP Project — Turkey and Azerbaijan signed a Memorandum of Understanding on December 24th of 2011.

An Intergovernmental Agreement and a Host Government Agreement regarding the TANAP Project were signed on 26th June 2012 in Istanbul. The HGA (Host Government Agreement) foresees that the duration of the TANAP pipeline is 49 years with a possible extension of it, with an initial capacity sufficient for transporting the production for stage

2 of Shah Deniz Field and a maximum capacity of 32 bcm/year being a 56 inch pipeline. The further capacity extension beyond 32 bcm/year is subject to the mutual agreement of Turkey and Azerbaijan. A freedom of Gas Transit is ensured and TANAP Co shall have right to use and/or market TANAP's capacity and to charge tariffs to the shippers in its sole discretion but has an obligation to notify the Government. A pro-rata capacity allocation priority will be adopted.

Part 2

Authorities' analysis

2.1 *Market Test* results

2.1.1 Rationale behind the *Market Test* design

As discussed previously in §1.4.1 the *Market Test* has been structured in two phases, the so called *Expression of Interest phase* and the *Booking phase*.

The rationale behind the design of the Market Test, in this particular case, is the following.

The Market Test was designed with the view to provide to all interested market participants the opportunity to reserve capacity in TAP, in a region where natural gas markets are emerging and, with the exception of Italy, far from being mature. This opportunity included the possibility to request capacity which did not coincide with the business model of the shareholders of TAP AG. To this end, the Market Test allowed also non-typical market participants to express their interest in reserving capacity to TAP. On the other hand, the Market Test was fully compatible with the bussiness case of TAP AG shareholders.

The broad participation on one hand has helped the Authorities to collect a lot of useful data and information on the market demand related to the TAP project and, on the other hand, has brought to the Authorities elements to evaluate the concreteness of the submitted requests and the validity of the Expression of Interest phase.

Whilst it is acknowledged that, as far as capacity allocation is concerned, the result of a non-binding phase is, almost by definition, an over-estimation of the potential buyers of this capacity, which can be rectified by the binding phase, the Authorities consider that, in this particular context, a binding phase would have an adverse and very predictable result the non-participation in the binding phase of the capacity allocation.

This is because only those of the participants in the Expression of Interest phase who had already entered into binding gas purchase agreements with Shah Deniz Consortium would be interested in booking the capacity they need in the binding phase.

According to cross-certified information by various official sources, including the partners of the Shah Deniz Consortium, these volumes are currently under negotiation

by the Shah Deniz II developers with numerous potential buyers, including the sponsors of TAP. The results of such negotiations will not have been concluded before the end of Q1 2013.

But since Shah Deniz II gas is not yet sold to any one and this will not happen before a substantial time period elapses, Authorities agree that no one would have been able to commit himself in a long-term capacity booking, except, probably, from TAP AG shareholders who, in fact, are the only ones who are not committed even after the Booking phase, as they always have the option to withdraw from the project, by not taking the Final Investment Decision for the project.

Therefore, Authorities are of the opinion that performing a binding Booking phase of the Market Test immediately, would only have ended up to a poorer result, where a single participant, the only one who is in fact not running any risk, i.e. the shareholders of TAP AG, would have participated. In such a situation, Authorities would have had from Market Test a strong support to granting the exemption, but the decision would have not been supported by enough knowledge and elements to impose conditions.

On the contrary, if the binding Booking phase is performed when the buyers of the Shah Deniz II gas have become known, this would increase the possibility that the binding phase of the Market Test will result in more meaningful result than nowadays.

2.1.2 Results evaluation

As presented in §1.4.5.2 (Table 1.4), the Market Test revealed an overall demand of approximately 46.4 bcm/year from shippers who rely on Shah Deniz gas or on new sources of gas.

As Shah Deniz II gas is not yet sold, the Table 1.4 is showing that a number of potential buyers are willing to enter in a long-term contract, whilst only a minority is interested in medium-term duration.

It shows also that requests for transportation of Shah Deniz II gas have a range between a minimum of around 32.1 and a maximum of 42.6 bcm/year. In the extreme scenario where all natural gas quantities to be transported on behalf of the companies that have not distinguished between gas coming from Shah Deniz and gas coming from other sources (i.e. [*Entity*], [*Entity*], [*Entity*] and [*Entity*]: hereafter "companies with mixed gas sources") would be originating entirely from the Shah Deniz II volumes, then the total transportation capacity requests for Shah Deniz II gas would result in 42.6 bcm/year (32.1 bcm/year plus 10.5 bcm/year). If all natural gas of companies with mixed gas sources would be originating from sources other than Shah Deniz, the total capacity demand would result in 32.1 bcm/year from Shah Deniz II and 14.3 bcm/year from other sources (10.5 bcm/year plus 3.8 bcm/year: the total amount of those who gave no gas source indication at all (i.e. [*Entity*], [*Entity*], [*Entity*]). In other words, it is possible to say that on the basis of the data given in Table 1.4, demand from sources other than Shah Deniz have a maximum of 14.3 bcm/year.

However, since the volumes of gas to be produced in the second phase of Shah Deniz and available to be transported to Europe via TAP will be no more than 10 bcm/year, it is reasonable to assume that the Initial Capacity of TAP (i.e. 10 bcm/year)

would suffice for the transportation of the Shah Deniz II gas volumes and simultaneously cover all potential capacity requests for these volumes, while the Expansion Capacity (i.e. the additional 10 bcm/year) would also suffice to transport all gas quantities with sources other than Shah Deniz II (ranging up to 14 bcm/year) especially if not all of the participants of the Expression of Interest Phase participate in the Booking Phase of the Market Test, should they don't feel in strong position to commit capacity on a long-term basis for gas quantities that might come from non-specified (and, therefore, potentially not secured) sources.

The Authorities, therefore, agree that the most meaningful way forward for the capacity allocation of the TAP project would be that a maximum of 50% of the Total Capacity (i.e. the Initial Capacity) of TAP is dedicated to the volumes of gas to be produced by Shah Deniz II, while the rest 50% (or more) of the capacity (i.e. the Expansion Capacity + the unused Initial capacity, if any) is made available to the market participants who have expressed their interest in transporting gas volumes with a non Shah Deniz II origin.

At the same time, the allocation of Initial Capacity should be performed in a way that does not hinder "upstream" competition (i.e. competition between potential buyers of Shah Deniz II gas), and which would safeguard that all future buyers of Shah Deniz II gas will have equal access to transportation capacity through TAP. To this end, the intention of the shareholders of TAP AG that[1]

> *"...the capacity other than the capacity to be used by TAP's shareholders for shipping of SD gas will be re-allocated to other buyers of SD gas, once the SD gas buyers are selected, and prior to Final Investment Decision. The Existing Shareholders and the Potential Shareholders of TAP are ready to sign an Undertaking through which they commit to release the capacity that they will not use for shipping of SD gas and enabling TAP to offer it to all other buyers of SD gas"*

can be exploited for a viable and efficient solution for the allocation of Initial Capacity in assessing the exemption request: TAP AG should have the obligation to transfer any capacity rights on the Initial Capacity to all buyers of Shah Deniz II gas, as soon as those buyers become available and upon their request.

Finally, for the accommodation of the requests from companies not directly interested for the transportation of the Shah Deniz II gas, the Authorities consider appropriate to obligate TAP AG to offer the Expansion Capacity of TAP to all other participants of the Expression of Interest Phase who would still be willing to reserve capacity in TAP for the transportation of non-Shah Deniz II gas. To this end, the Authorities consider appropriate to impose on TAP, as a condition to an exemption for the Initial Capacity, the obligation to proceed with the Booking Phase of the ongoing Market Test. TAP AG will also have the obligation to make all capacity reserved through this Booking Phase available to the holders of such capacity at the same time with the Initial Capacity, i.e. from the Commercial Operation Date of the pipeline.

[1] See §1.4.6.

Concluding, as a result of the Expression of Interest phase of the Market Test, the Authorities agree that:

1. not only the sponsors of TAP, but also the market, considers TAP mainly as a vehicle for the transportation of the Shah Deniz II gas to Italy, which is the main destination market of TAP; the demand of such capacity almost is overlapping with the Initial Capacity of TAP;
2. there is potential demand for capacity in TAP, which would cover not only the Initial Capacity of TAP, but also the Expansion Capacity, in part or as a whole;
3. there's a demand for forward and reverse flow to Albania and Greece as well;
4. demand for products of shorter term (5, 10, 15 years) is relatively low (less than 2 bcm/year);
5. institutions showed an interest in the pipeline, not for booking capacity itself, but as a leverage to develop new markets.

2.2 Overview of natural gas markets in the relevant geographic areas

2.2.1 Italy

2.2.1.1 Natural gas supply infrastructures and gas demand

In 2011 Italy's gross consumption of natural gas was around 78 bcm (that was, 6.2% lower compared to the previous year due to the economic crisis and mild temperatures). There is still great uncertainty on the evolution of the national gas demand from now until 2020 which will depend, among other things, on the robustness of the economic recovery from the crisis. Some influential industry associations and pre-eminent research institutions forecast a growth of gas demand within a range between 87 bcm/year (Unione Petrolifera, March 2012) and 95 bcm/year (AIEE[2] December 2011). Conversely, the document containing the National Energy Strategy recently issued by the Italian government foresees a national gas consumption level in 2020 largely comparable to the current one, due to the significant improvements of the energy efficiency of the Italian system; however it does not exclude either the possibility of a greater increase of the national gas demand up until 90 bcm/year considering the uncertainties on the evolution of the Italian economic system.

Currently a bit less than 90% of the gross domestic consumption is satisfied by imports while the remaining 10% by domestic production.

In 2011 gas imports to Italy amounted to 70.3 bcm. The main exporting countries are Algeria (33%), Russia (28%), The Netherlands, Norway and Austria (around 5% each), Germany (4%), and other EU (5%) and non-EU countries (around 3%). In 2011

[2]Italian association of energy economists.

imports from Libya dropped to the current level (around approximately 3%) against an average value exceeding 12% in the last 4 years[3]. Most of the gas imported through LNG terminals comes from Qatar and represents rounded up 9% of the total gas imported to Italy (these percentages refer to gross domestic consumption).

93% of the gas coming from Algeria is imported through the TTPC pipeline (Trans Tunisian Pipeline Company) which is connected to the Transmed pipeline and access the National transmission network through the entry point of Mazara del Vallo which has a nominal capacity of 99 mcm/day. The remaining is injected into the National transmission network through the regassification terminal of Panigaglia which has a booked capacity of 11.4 mcm/day. Gas coming from Russia arrives to Italy at the entry point in Tarvisio (with a nominal capacity of 107 mcm/day through the TAG interconnector). Gas originating from Northern Europe is imported through the pipelines connected to Transitgas which is in turn connected to the entry point of Passo Gries (having a nominal capacity of 59 mcm/day). Gas coming from Libya is imported through the Greenstream pipeline which is connected to the National transmission network through the entry point of Gela which has a nominal capacity of 31.6 mcm/day. Gas volumes originating from Qatar are injected into the National transmission network through the LNG terminal of Rovigo which has a booked capacity of 26.4 mcm/day[4]. Additionally, imported gas arrives to Italy at the entry point in Gorizia which has a nominal capacity of 2 mcm/day.

The total nominal import capacity of the entry points to the Italian system, in terms of volume, is around 110 bcm/year.

Although the average utilization rate of imports infrastructures in Italy is around 70%, the enhancement of such infrastructures remains very important for the country, considering the great variability of the national consumption level of gas throughout the year which can still cause critical situations when the daily intake capacity reach saturation as it occurred in February 2012 due to adverse whether conditions in the whole Europe. In that occasion, the extremely rigid temperature led to a considerable increase of the gas consumption level concomitantly to a reduction of the available intake capacity which caused problems to the daily balancing of the system despite the existence of a significant amount of gas in storage.

There are several investments under consideration which are expected to be realised in the coming years in order to increase the transmission capacity along the north-south corridor. The main project in this respect regards the Adriatic dorsal and it involves (i) the reinforcement of the pipeline which connects the south of Italy to the north and (ii) the construction of a compression station. This upgraded pipeline can be connected to Passo Gries and Tarvisio/Gorizia by reinforcing also the east-west corridor of the Po valley.

Investments regarding Pianura Padana valley will entail the adjustment of the existing compression stations and of a metering system which are used to manage gas physical flows exiting from the national grid in correspondence to the entry points in

[3]In 2010 imports from Libia amounted to 9.4 bcm.

[4]This terminal has been granted an exemption from the third party access obligation for 25 years pursuant to the Law N° 239 of 23 August 2004.

Passo Gries and Tarviso. Said projects will increase the gas physical flows exiting from the national grid, laying the ground for future projects finalised to export gas from Italy and to enhance the existing import/export capacity of the existing infrastructures when needed.

2.2.1.2 Regulatory framework

In Italy, the transport activity is disciplined by Legislative Decree N° 164 of 23 May 2000 (hereinafter: the "Letta Law") recently modified by Legislative Decree N° 93 of 1 June 2011 implementing Directive 2009/73/EC. The Letta decree, which liberalised the gas sector in Italy, regulates both the up-stream (importation and production) and the down-stream (transmission, distribution, storage and sale) activities of the gas business. Detailed provisions on gas are also contained in ministerial decrees and in the Resolutions issued by the AEEG which is entrusted by law to regulate and control the gas and electricity markets.

According to the provisions of the Letta decree the main areas subject to AEEG's regulation with respect to the gas sector regard the definition of allowed revenues and tariffs as well as the quality levels of the transport service and the determination of rules on access to and provision of transport service.

With regard to transmission tariff regulation, the Authority sets out every 4 years the criteria which are at the base of each regulatory period. The current regulatory period runs from 1st January 2010 to 31st December 2013 and is regulated according to the provisions of the Resolution ARG/gas 184/09. The quality of transport service is regulated under the Resolution ARG/gas 141/09.

The rules on access to gas transportation pipelines are mainly contained in the network codes that each transportation company drafts in compliance with AEEG Resolution 137/2002 which sets the general criteria to grant free access to the transportation system as prescribed by Article 24.5 of the Letta decree. Following receipt of the draft network code by the undertaking concerned, AEEG assesses by way of a consultation the suitability of the rules contained therein in order to grant equal access to all network users and as a result of its evaluation it decides to approve or modify the network code. Network codes deal, inter alia, with the allocation of transmission capacity by the Transmission System Operator to those filing such request which by consequence acquire the right (as Users) to inject and withdraw on any day of the thermal year a quantity of gas not exceeding the daily flow provided, to and from the entry and exit points of the National Network. The procedure for capacity allocation takes place yearly before the beginning of the thermal year and it is pursued along the year to allocate the residual available capacity. The maximum duration of contracts for capacity allocation is five years.

To conclude, in Italy the EU provisions (Article 22 of Directive 2003/55/EC, subsequently replaced by Article 36 of Directive 2009/73/EC) governing the exemption regime from the obligation to offer third parties access for those investing in new gas infrastructures or in enhancements of existing infrastructures, have been transposed by Article 1.17 of the Law N° 239 of 23 August 2004 (as modified by Legislative Decree N° 93 of 1

June 2011). In turn, AEEG Resolution ARG/gas 2/10 defines the rules applicable to the allocation of transmission capacity on the national gas network for import/export gas pipelines that have been granted exemptions from third-party access rights or priority allocation rights in accordance with the criteria set by the Ministry Decree of April 28th, 2006. The requirements and the modalities for the issuance by the Ministry of Economic Development of an exemption decision or for the attribution of priority allocation rights are set by the Ministry Decree of April 11th, 2006.

2.2.1.3 Market concentration

The presence of the former incumbent ENI is still significant at any level of the natural gas supply chain.

In Italy gas imports are still strongly concentrated in the hands of few players as shown by the fact that despite the presence of 48 gas importers the market share of the first three players collectively amounts to 72.3%. The market leader is ENI with a market share of 41.4%, followed by Edison with 17.3% and Enel Trade with 16.6%. The remaining competitors hold a share below 2%. With respect to gas production, ENI has a market share slightly exceeding 83% at national level.

Moreover, ENI still detains a significant shareholding in the capital of the main import infrastructures in Italy. Thus, despite the divestment by ENI of its shares in companies related to the three international pipelines TAG, TENP and Transitgas following the commitments offered to the European Commission, the group still has the entire share capital of TTPC as well as 50% shareholding in respectively TMPC and the Greenstream pipeline[5].

Although the wholesale market is progressively growing (the volume of gas exchanged in the PSV raised by 5 percentage points in the thermal year 2010-2011) the latter is still marked by low liquidity and most of the gas procured by wholesalers (around 74%) still comes from imports and purchases at the PSV[6]. The total volume of gas exchanged on the wholesale market in 2011 was around 87.64 bcm with a churn rate of 2.6.

In 2011 the first player in the wholesale market was still ENI with a market share of 14.8%, followed by Edison with 7.1% and Sinergie Italia with 6.2%. The remaining market players are 143 with a market share not exceeding 6%. It follows from the foregoing that ENI with a market share twice the second player and much higher compared to the majority of the other wholesalers still enjoys a considerable market power on the Italian gas wholesale market in turn boosted by its control over significant import capacity.

On the retail market there are 308 active undertakings thereof the first three players hold a collective market share of 49.5%. ENI is the leader also on this market with a share of 26.8% followed by Enel 11.8% and Edison 10.9%.

Regarding the TAP project, neither TAP shareholders nor Shah Deniz shareholders have a dominant position in the Italian wholesale and/or retail natural gas market.[7]

[5] In April 2010 ENI sold its controlling 25% share in this pipeline to the Libyana State-owned company NOC.

[6] Virtual Exchange Point

[7] Statoil ASA was not active either in the wholesale nor in the retail sale gas market in Italy in 2011.

2.2.1.4 Contribution of TAP project to the Italian market

As it will be explained hereinafter, TAP will benefit Italy by enhancing competition on the Italian gas markets and fostering the security of supply of the country through the creation of an alternative import channel to the gas system .

Under the first respect, the construction of TAP will connect Italy with a new gas production area based in the Caspian region which will have the effect of increasing the competitive pressure on the existing gas supply sources mainly originating from Russia and Algeria (respectively 28% and 33% in 2011). Moreover, TAP's initial throughput capacity (of approximately 10 bcm/year will enable its shareholders (namely EGL AG, E.On Ruhrgas AG and Statoil ASA) to secure a significant amount of gas imports to Italy therefore allowing them to compete more effectively with the Italian leader ENI which still controls over 40% of the import capacity of the country on a long-term basis. It follows from the foregoing that TAP could also gradually contribute to erode the market power of the former incumbent in the wholesale market by reinforcing the market presence of EGL AG and E.On Ruhrgas AG which currently operate on the Italian wholesale gas market although with a limited market share (both around 1% at the level of each individual undertaking).

Furthermore, due to the correlation between wholesale and retail gas prices in Italy, an improvement of the competitive structure at the wholesale level will most likely also have positive effects downstream at the retail level.

Additionally, the increased flexibility and liquidity of the Italian natural gas system brought about by TAP might also be beneficial for Europe as a whole, due to the interconnection of the Italian gas transport network with other EU Member States' networks. Indeed, the Project at stake might lay the foundations to set up a gas hub in Italy which, if adequately developed, could exert a competitive pressure over gas importers to other European countries which would have to confront also with the gas' offer originating from Italy.

Under the second respect, TAP will contribute to the security of supply of the country by providing an alternative gas procurement source to the existing ones should the latter be unavailable (as it occurred for instance during the Russia-Ukraine gas crisis in 2006 and 2009 or at the occasion of the recent political disorders in North Africa).

Furthermore, should an Italian gas hub come into operation in the future, the additional gas imports brought about by TAP to Italy could also be used to satisfy peaks of gas demand in Europe such as those occurred in many EU countries at the beginning of 2012 due to adverse whether conditions.

TAP will likely also have a positive impact on the Italian electricity markets which largely depend on natural gas for energy production given that over 40% of total elec-

EGL AG had a market share of 1.2% in the Italian wholesale gas market and 0.1% in the retail sale market in 2011. E.On Group had a market share of 2.5% in the wholesale gas market and 4% in the retail sale gas market in Italy in 2011. BP Group had a market share of 1.4% in the wholesale gas market and no market presence in the retail sale market in Italy in 2011. ASA, the State Oil Company of Azerbaijan Republic (SOCAR), AOA LUKOil, NICO, Total SA, TPAO did not have any market presence in Italy either in the wholesale or in the retail sale gas market in 2011.

tricity generation in 2011 came from gas fired plants.

Notwithstanding the previous considerations, it has to be noted however at this stage, it is not clear how much gas will be transported through the TAP pipeline to Italy or which market players will hold capacity. This will become clear only after the capacity allocation procedures have been concluded. The Authorities therefore deem it necessary to pay particular attention to the worst-case scenario, i.e. a dominant market player becoming the capacity holder of all or of a large part of the gas entering in the relevant markets. In such a worst-case scenario, it could happen that TAP could not be considered to enhance competition.

The Authorities consider that additional conditions are needed to prevent the worst-case scenario and to ensure that TAP will, in any event, enhance competition in gas supply. Such additional conditions have to ensure that a dominant market player cannot book a share of capacity in the TAP which would reinforce its position.

To conclude, the positive effects on competition expected from the investment would be reduced in case an undertaking with a significant degree of market power would reserve a substantial part of the long-term regasification capacity. It is, therefore, necessary to limit the access of such companies, and any affiliated companies, so that they cannot reserve on the long-term basis only and the short-term booking is limited to the 25% of the available capacity for short-term ($\leq$ 1 year). This restriction should also apply to any undertaking with a dominant position in any of the Italian wholesale and retail markets.

2.2.2 Greece

2.2.2.1 Natural gas supply infrastructures and gas demand

Currently the Greek gas market is supplied by pipelines importing gas from Russia, through Ukraine, Romania and Bulgaria and from Azerbaijan, through Georgia and Turkey, as well as from the existing regasification LNG Terminal in Revythoussa. The National Natural Gas transmission System (NNGS) transports gas from the Greek–Bulgarian border from the North, the Greek–Turkish border from the East, and the Liquefied Natural Gas Receiving Terminal on the Revythousa Island at the vicinity of Athens from the South, to consumers in continental Greece. The main transmission pipeline (MTP) of 512 km total length extends from the Greek–Bulgarian border to the prefecture of Attica. A 303 km, 24" branch beginning south of the Greek-Bulgarian entry point, near the city of Thessaloniki to the East, which, for the last 80 km is transformed into a 36" pipeline, connects the MTP to the Greek–Turkish border. Additional branches of circa 400 km connect the MTP to the Revithoussa terminal and other demand centers. Interestingly enough, half of the span of the proposed TAP route in the Greek territory will go in parallel to the existing Eastern branch of the NGS to Turkey, while the other half crosses the region of Western Macedonia an Epirus where there is no gas infrastructure and, therefore no gas customers. Firm entry capacity at the pipeline system is 9.1 bcm/year, almost equally split between the LNG regasification and two pipeline and entry points, and is expected to be extended to circa 12 bcm/year by 2015

after the completion of a scheduled upgrade of the LNG terminal and the addition of two compressor stations, one currently under construction and another one in the planning phase, near the border with Turkey. Gas consumption from 2009 to 2011 has increased at startling rate of 16% partly due to a corresponding increase in natural gas fired power plants. Gas consumption in 2011 reached 4.5 bcm. However, the economic crisis is expected to have an impact of unknown extend in the Greek gas consumption.

2.2.2.2 Regulatory framework

Access rules to both the transmission system and the LNG Revithoussa terminal were concluded in 2010 and are included within a comprehensive package of secondary legislation comprising:

- the Network Code setting the rules for third party access to the transmission system and to the LNG terminal;
- the NNGS Users Registry Regulation setting the requirements and procedures for the registration of any legal or natural person as a gas shipper;
- the Authorisation (License) Regulation setting the rules for granting, amending and revoking gas supply and gas distribution licenses and the licenses for owning and operating an Independent Natural Gas System (INGS) in the country as would be the case of TAP (INGS License and INGS Operation License);
- the Measurements Regulation setting the technical rules and procedures for measuring natural gas volumes at the entry and exit points;
- the Standard Transportation Agreement and the Standard LNG Agreement, which the TSO concludes with system users wishing to access respectively the transmission system or the LNG terminal;
- the Tariff Regulation, which was recently revised by RAE and imposes an Entry-Exit tariffication system, accompanied by the publication of the corresponding Entry and Exit Tariffs. The implementation of the new Entry-Exit Tariff Code has started on the 1st of February, 2013.

In 2011 the Network Code was revised and extended to include the rules for new infrastructure required to be developed as part of the NNGS, including provisions for concluding Advanced Capacity Reservation Agreements between parties wishing to book capacity on the new infrastructure and the TSO. Directive 2009/73/EC was also transposed to the Greek legislation in 2011. Finally in the summer of 2012, the Tariff Regulation was approved introducing an entry-exit tariff system.

According to the application of TAP AG, the entry point of TAP is located at the city of Komotini, where it will be connected to the existing NNGS. All quantities are anticipated to be transported to this entry point from Turkey, through the existing Greek-Turkish Interconnection point, which is part of the existing NNGS, owned and

operated by DESFA. The shareholders of TAP AG have already applied for capacity reservation in this point, according to the provisions of the Gas Law and the Greek Network Code. The same provisions will apply for the reservation of the corresponding capacity, which will exist once the compressor stations required both at the Greek and Turkish side of the border.

However, should TAP AG decides for TAP to be connected directly to the anticipated TANAP pipeline, currently in the planning phase, the entry point of TAP will not be in the city of Komotini and will be transferred to the Greek-Turkish border. Should this solution be chosen by TAP, something which is fully compatible with the Greek legislation, TAP will have to build additional connection points to the existing Greek NNGS, following consultation with DESFA (the Hellenic TSO) and RAE, according to the provisions of the present decision (point 4 of §4.7). Such a decision of TAP will neither affect the decision on exemption, nor affect the decision on the license for an Independent Natural Gas System that TAP AG has already submitted to RAE, following the provisions of the Greek Gas Law.

In addition, the Greek legislation provides also for the virtual reverse (backhaul) flow in the entire Greek NNGS, and every Entry point is also an Exit point. This provides additional flexibility, as well as the possibility for the use of TAP for gas trading transactions of various kinds, especially when combined with the development of a Virtual Gas Trading Point (VGTP), which is currently in the design phase in Greece.[8]

To this end, the development of TAP will provide for the future linkage between the Greek VGTP and the Italian PSV, a development which will enhance gas to gas competition, fully in line with the future Gas Target Model, with very positive effects for the whole SEE region.

2.2.2.3 Market concentration

Following the completion of the Network Code in 2010, competition in gas supply has intensified. Since April 2010, third parties (power producers and large industry) begun to import LNG on a spot basis, mainly for their own consumption. As a result, the Herfindahl–Hirschman Index (HHI), a well-established competition quantifier dropped from its ceiling value of pure monopoly (10'000) in the 2009 to 7'887 in 2011, a reduction of more than 20%. Annual switching rates of non-household customers (by eligible volume) climbed to 12% in 2011. The share of the incumbent DEPA S.A. as far as LNG supply is concerned decreased by 37% to 63% while all data from April 2009 to autumn 2012 indicate an overall loss in the market share of circa 10%. However, DEPA S.A. still remains the dominant gas supplier in the Greek gas market, with 88% share on imports and 77% in the total consumption of the eligible customers.

Besides DEPA S.A., which supplies gas on the wholesale and the retail level, and the self-importing / self-consuming eligible customers mentioned above, there are three (3) distribution companies (known as EPAs), which supply gas to non-eligible customers,

[8]DESFA has already proposed the establishment of such a VGTP as a revision to the Network Code, currently under public consultation. The final decision of RAE on the Code is anticipated by April 2013.

each being a monopoly in a specific geographical area: EPA Attica, EPA Thessaloniki and EPA Thessalia. DEPA S.A. owns 51% of each EPA.

The immaturity of the Greek market and the prevailing upstream circumstances are such that, for the time being, pipeline gas imports are fully controlled on the upstream side by a dominant traditional supplier of Europe from the North (Gazprom Export), and from a vertically integrated undertaking from the East (BOTAS). Both upstream suppliers have concluded long-term contracts with the Greek incumbent, DEPA, who has evolved as a traditional dominant supplier of the Greek market.

In addition, access to the upstream feeding pipelines is prohibited for any Greek gas market participant, due to the prevailing legal frameworks in upstream gas infrastructure, thus increasing the dominant role of the upstream suppliers.

However, a decision of the Greek Competition Authority, put into entry from December 1st, 2012, imposes an obligation to the Greek incumbent DEPA to implement a gas release program on both upstream pipeline import points from Bulgaria and Turkey, as well as to gradually reduce their booked capacity share on all existing and future import points to less than 55% of their technical capacity. Although this decision is an important step to enhancing competition in the internal gas market of Greece, its impact in enhancing competition in the upstream side remains to be evaluated, since all existing pipeline import points are, for the time being, entirely controlled by upstream incumbent suppliers, who have no incentive to give up the control they possess in the upstream side of the import points to Greece.

Therefore, the only existing source of competing gas imports is the regasification terminal of Revythoussa. Despite the important recent evolutions which allowed third party suppliers — mainly eligible customers — to diversify their supplies through spot LNG imports, these evolutions cannot be enhanced if third party suppliers cannot formulate a diversified gas supply portfolio, including both LNG and pipeline gas. Since the existing capacity of the LNG terminal does not allow for long-term imports of base-load gas and the upstream pipelines cannot remedy this problem, enhancement and sustainability of competition is very difficult to be achieved in the Greek gas market without additional investments. Such investments are hard to be achieved based only on national resources, since the existing and forecasted Greek market levels seem insufficient to support these investments under reasonable costs.

Regarding the TAP Project, neither TAP AG's shareholders nor Shah Deniz Consortium shareholders have any presence in the Greek natural gas market.

2.2.2.4 Contribution of TAP project to the Greek market

Despite the fact that, regarding Greece, the TAP project, as proposed, is mainly dedicated to the transportation of gas to Italy, at least in its Initial phase, contribution to the gas market and to the the enhancement of the security of gas supply is expected to be very positive as further explained below.

The construction and operation of TAP, will contribute to the change of the market conditions described above. It will provide a new supply route, which, under the business plan presented to the Authorities and verified through the Expression of Interest phase by

upstream suppliers, will allow for additional sources of gas, to reach Greece and further beyond. These supplies will not only come from diversified sources, but will also belong to a number of shippers — including Greek eligible customers and suppliers, as reflected in the Expression of Interest phase — who are going to eventually conclude gas supply agreements with the Shah Deniz II Consortium, or others who have expressed their willingness to transport through TAP gas from other sources. Once the present decision safeguards, on the one hand, that all of those shippers committed to reserve capacity in TAP will be allowed to do so, and, on the other hand, obligations are imposed on TAP to develop connections to the Greek territory, the construction of TAP will greatly enhance competition in the Greek gas market, facilitating the reduction of the dominant position that either the Greek incumbent or the existing upstream suppliers have on the Greek market.

In fact, the Expression of Interest phase of the Market Test demonstrated that the pipeline is also attractive to shippers wishing to use TAP for the transportation of natural gas to the Greek market; circa 8% of all forward capacity requests refer to long-term capacity with an exit point in Greece (see §1.4.5.2). In more detail, capacity requests for long-term capacity associated with an exit point in Greece amount to 103 GW/day or 3.5 bcm/year. These values correspond to approximately 60% of the projected natural gas demand in the Greek market for the period 2018–2022 and to about one third (1/3) of the sum of the current technical capacities of the existing entry points of the Greek NNGS. In this context, TAP can significantly enhance competition in the Greek market as far as upstream gas supply is concerned, provided that gas imports from Shah Deniz II or other new sources, as indicated by Expression of Interest participants, are implemented.

TAP can also enhance competition in the suppliers' side provided that capacity at the Exit Points of TAP in Greece is booked either by new entrants, or by existing suppliers with a limited market share. Clearly under a worst-case scenario, competition will arguably be compromised if all of the available capacity, at one or more potential TAP exit points in Greece, is reserved by a single undertaking with a high market share. Currently this would arguably be the case of the incumbent, DEPA SA. Furthermore, given the fact that the Greek market is relatively small and immature, compared to other European markets, collective dominance of a number of undertakings that may jointly/collectively dominate the market could also arise hindering competition.

The present decision should safeguard, on the one hand, that all of those shippers committed to reserve capacity in TAP will be allowed to do so, and, on the other hand, obligations are imposed on TAP to develop connections to the Greek territory. In addition to that, conditions should be imposed, which would prevent DEPA SA, the Greek incumbent, or any other supplier of the Greek market with a share higher than 40% in the relevant product market, to obtain more than 50% of the new gas supplies from any future exit points of TAP in the Greek territory. Under these circumstances, the construction of TAP will greatly enhance competition in the Greek gas market, facilitating the reduction of the dominant position that either the Greek incumbent or the existing upstream suppliers have on the Greek market.

Finally, the implementation of, either virtual or physical reverse flow through TAP

from Italy, under the terms and conditions of the present decision, will provide further access to one of the most diversified markets in Europe, as explained previously. The existence of a wholesale trading point in Italy, along with the future development of a similar wholesale trading point in Greece, as mentioned in the previous section, will enhance liquidity and gas to gas competition.

One of the proposed mid-term actions of the draft Preventive Action Plan currently under consultation with stakeholders, based on the conclusions of the Security of Supply risk assessment[9], is the encouragement of the diversification of gas supply sources through the promotion of the construction of a new interconnection with a new supply region or a well-diversified gas market, either coupled with a new long-term supply contract or with the possibility to supply gas in case of emergency, through virtual or actual reverse flow.

The TAP project is expected to critically contribute to the security of supply of Greece, in five parallel ways:

1. *Enhanced possibility of diversification of supply sources*: currently, a relatively small percentage (2011: 15%, average 2007-2011: 11%) of the gas supply mix is of Caspian region origin, through a supply contract between the incumbent DEPA S.A. and Botas S.A. Opening up of the Southern Gas Corridor through TAP, along with TAP capacity expansion and allocation through Market Tests and the construction of exit points in Greece — as already foreseen in the TAP business model — will obviously provide the opportunity for larger quantities from the Caspian region — or potentially other regions — to enter the country, diversifying the supply mix. This is also supported by the fact that three companies currently present in the electricity and gas sectors in Greece participated in the Expression of Interest phase of the Market Test performed by TAP AG.

2. *Upgrade of the import capacity of Greece*: the approximately 10 bcm/year (or even 20 bcm/year) throughput capacity of TAP, it will directly and positively affect the fulfillment of the $N-1$ criterion of Regulation 994/2010. Virtual or physical reverse flow from Italy will have the same impact with adding a new import point to the Greek natural gas transmission system.

3. *Connection with a well diversified market*: through TAP, the Greek natural gas system is connected to the market of Italy, one of the most diversified markets in Europe in terms of the supply mix. This clearly increases the number of options for emergency supplies of gas either through virtual or physical reverse flow. This will be further safeguarded through conditions imposed on TAP, accompanying the joint decision on the exemption application.

4. *Access to Storage facilities in Italy*: the Interconnection with Italy will link the Balkans, a region effectively missing storage volumes with the Italian System which is endowed with significant underground storage volumes. Suppliers could through

[9]See: `http://www.rae.gr/site/file/system/docs/natural_gas/05112012_3`

virtual or physical reverse flow from Italy arrange for the supply of gas from storage in case of emergencies or in order to cover peak demand.

5. *Connection to the SEE region*: following the interest expressed in the Expression of Interest phase by entities in the Western Balkan region and the conditions accompanying the decision on the exemption application, there is the possibility in the future for the connection of the Greek NGTS to the natural gas transportation systems in the North Western Balkans and the Central Eastern Europe. This will not only enhance the security of supply of the Greek market, but also of the whole SEE region.

The contribution of TAP to the security of gas supply in Greece, will be further consolidated through imposing the obligation of providing for bi-directional connections to the National Natural Gas System at specific locations, effectively looping a critical part of the Greek system, in order to allow for diversion of gas quantities to different parts of the Greek system in case of emergency.

2.2.3 Albania

2.2.3.1 Natural gas supply infrastructures and gas demand

Oil activity in Albania dates from early ages. Natural gas production has started since year 1968 and in year 1982 it peaked at nearly 1 bcm/year. After 1990 gas production declined significantly and it is currently close to nil. A number of international companies are exploring for oil and gas and there is drilling activity under way for new prospects, at the moment of drafting this decision. Eventual new gas discoveries will be in need of infrastructure to deliver their supplies to markets.

Albpetrol sh.a. the state owned company, now under privatisation, inherits more than 400 km of pipelines. The existing gas infrastructure is located mainly in central south-western part of the country and has been developed to connect the exiting gas and oil fields with the main industrial consumers in the past. Only a very limited part is connected to residential areas. There are no connections with the neighbouring countries gas networks. Decline of production has led to lack of maintenance and poor technical condition of the infrastructure. It is obvious that significant investments are needed to connect this infrastructure to a main source of supply like TAP and bring the whole piping system in good working order.

Albania has important capacities for underground storage consisting of a number of depleted gas and oil fields under Albpetrol sh.a possession and an important underground salt dome structure in Dumre area. The potential of gas underground storage capacity in Albania is estimated at a level of at least 2 bcm/year. Considering the estimated initial and forecasted gas demand of Albania, were such storage capacities developed, the benefits would be not only for the Albanian market but for the whole region. Development of such potentials can only happen after an interconnection infrastructure like TAP is in place.

Natural gas supply is of great importance for Albania's energy security of supply. According to the National Strategy of Energy, the total energy demand of the country during the last decade has grown at an average yearly rate of nearly 1.7%. All power generation is based on hydro which is no longer capable to meet domestic demand and the country has become a net electricity importer. Albania has undertaken several reforms to attract new investments for the construction of new power generation capacities and enhancement of its interconnectors with neighbouring countries. Despite such measures the gap between demand and supply remains high. The single thermal power plant with an installed capacity of 97 MW, expandable to 300 MW, built near the city of Vlora is not running due to lack of fuel gas. Besides, there is a number of large potential industrial gas consumers like steel plants, cement and brick factories, etc. Other companies operating oil fields in Albania can also use natural gas either for enhanced oil recovery methods or for their daily operations. Such potential consumers constitute important anchor loads for future gas supplies. In addition during year 2011 Albania consumed 110 ktoe of LPG mainly in the residential sector.

The national demand for natural gas is estimated at a starting level of 0.3 bcm/year[10] and expected to grow to more than 1 bcm/year within a decade. Such modest demand has proven itself not to be sufficient enough to attract and justify investments for the individual connection of Albania with the natural gas network of any of the neighbouring countries. Many efforts have been made as part of the Energy Community Treaty process to coordinate interests of all Contracting Parties in order to establish more attractive alternatives. They have concluded in two main project ideas being the "Energy Community Gas Ring" and more recently the "Gas to Power Initiative". However all efforts have not succeeded to attract new investments so far for the development of gas infrastructure in this region. Therefore this is the reason that TAP represents an excellent opportunity for the gasification of Albania and the western Balkan area.

Currently all relevant actors are involved in a process for the preparation of a Gas Master Plan for the development of the natural gas sector in Albania. [*omissis*]

Due to the before mentioned considerations and the expected contributions in the improvement of the energy supply situation, the Albanian National Territory Planning Council (KKRT) gave TAP the status of "Project of National Importance[11]".

2.2.3.2 Regulatory framework

Albania is a Contracting Party to Energy Community and, in line with its commitment for the adoption of the Acqui Communautaire in the energy sector and expected future developments, it has approved the Law on Natural Gas Sector No 9946 dated 30/06/2008 by transposition of most of the articles of the Directive 2003/55/EC.

According to Power Sector Law No. 9072, dated 22.05.2003 ERE, (the Energy Regulatory Entity of Albania) is the authority for the regulation of the electrical sector. The

[10] "South East Europe, Regional Gasification Study", 2008 Economic Consulting Associate, Penspen, Energy Institute Hrvoje Pozar.

[11] Decision Nr 2 of the Albanian National Territory Planning Council (KKRT) meeting of 20 December 2012.

Natural Gas Sector Law expands the authority of ERE also for the regulation of the natural gas sector.

The Law defines the transmission of natural gas as an activity of public interest. In line with Directive 2003/55/EC the Article 22 of the Albanian Gas Law provides for the right of third parties for free access to transmission systems according to approved and published rules and methodologies.

Article 40 of The Albanian Natural Gas Sector Law is a complete transposition of Article 22 of the Directive 2003/55/EC and deals with the situation of possible exemptions in the case of new infrastructures or their expansion. The regulatory framework is at an early stage of development. So far ERE has reviewed its "Rules of Practice and Procedures" and has developed the "Rules and Procedures on Licensing, Modification, Partial/Full Transfer, Revocation and Renewal of Licenses" and model licenses for the natural gas sector.

In September 2012, following the review of the submitted applications, ERE licensed Albpetrol sh.a. the Transmission System Operator and the Distribution System Operator of the infrastructures it inherits from the past. The Albanian Natural Gas Law provides for more than one TSO's or DSO's in the country.

ERE continues its work for the development of regulatory framework following the respective models of the EU gas market sector, as part of the Energy Community Treaty process. In line with the Decision of the Council of Ministers of the Energy Community taken in 6th of October 2011 in Chisinau, Molodva; Albania shall implement the new Directive 2009/73/EC within 1st January 2015. Based on such arguments ERE agreed to review the TAP AG Application for Exemptions on the basis of the third Directive 2009/73/EC jointly with AEEG and RAE.

2.2.3.3 Potential of future market concentration

As previously explained there is no gas market in Albania and therefore the issue of market concentration can only be focused on the potential for such development in the future.

Licensed by ERE as the first TSO in Albania and inheriting existing infrastructure, Albpetrol sh.a. is already the first participant in the Albanian gas market, although not yet operational for objective reasons. [*omissis*]participants of the Market Test demonstrated a considerable demand versus forecasted gas consumption for Albania. This is a good indicator that domestic gas market can experience a quick development however as it was only an Expression of Interest and not associated with booking commitments, it can be expected that less participation can result from the first Booking phase and therefore a worst case scenario should be anticipated where Albpetrol sh.a or another entity will be the only one party active in the Albanian gas market. In addition Albpetrol is now under privatisation process which can make its eventual dominant position even less controllable than a public enterprise.

As mentioned earlier the infrastructure that Albpetrol inherits is in need of significant investment for upgrade and connection to future TAP. Even in case that other parties

will enter the Albanian market they will still need to make important investments to develop needed infrastructure to connect their customers to TAP.

Therefore considering such constraints and referring also to the definition of emergent market of the Directive 2009/73/EC, a capacity cap of 80% on any future Exit Point has been imposed for any gas market participant that will most probably hold a dominant market position in the Albania gas market for an initial period of 10 years from the first supply of natural gas in Albania (see point 9 of §4.7).

However derogations are also foreseen to avoid situations of non use of capacity and obstacles for infrastructure development.

2.2.3.4 Contribution of TAP project to the Albanian market

The contribution of TAP project for the Albanian gas market is multiple.

The main contribution is related with the fact that TAP represents the most realistic and efficient way for the gasification of Albania and wider. As mentioned under §2.2.3.1 Albania energy demand is in constant growth and in critical need for diversification. However due to its modest demand and significant investments needed neither Albania alone nor joint efforts made so far for the development of the Energy Community Gas Ring have been successful. TAP pipeline declared objective is to supply the Italian and other EU gas markets, but by transiting gas across Greece and Albania to Italy, it represents a real opportunity for the gasification of Albania as well as the other Contracting Parties of the Energy Community. This joint decision of Authorities allows TAP AG to develop its business case but integrates also the interests of transiting countries and wider including the creation of the basic conditions for the establishment and development of the gas market in Albania.

When nonexistent, for the gas market to be established and develop there is need for the break of the vicious circle related to what should be present first; the market demand or the physical presence of natural gas. As a consequence, an obligation is imposed on TAP (see point 7 of §4.7) to build an Exit Point with a minimum capacity of at least 2 mcm/day independently from the level of demand that will be shown in first Booking phase, so then the market can make its start.

By laying across Albania from Greece to Italy, TAP will connect the Albanian emergent market simultaneously with two important gas markets; the mature, well diversified and liquid gas market of Italy (PSV) and the most developed western Balkan gas market of Greece.

Due to its ability to both forward and reverse (virtual and physical) flows, TAP will enable the supply of gas to the Albanian market from a variety of sources including Shah Deniz II from Azerbaijan, the gas available in the Italian PSV, the Greek gas market with its LNG terminal of Revithousa etc. [*omissis*][12]

Under the terms and conditions of the present decision, the virtual reverse flow is expected to greatly increase the influence of PSV prices in the gas markets of Albania, Greece and western Balkan markets. As a result the TAP contribution in the enhance-

[12]This paragraph contains confidential data.

ment of competition in the Italian PSV and the Greek gas market as argued in both cases (§2.2.2.4 and §2.2.1.4), in the presence of virtual reverse flow is expected to positively contribute in the development competition in the Albanian gas market and later in the other Contracting Parties as Energy Community Gas Ring project develops.

[*omissis*]TAP AG is considered the future supplier of gas for the IAP pipeline. By connecting with TAP the IAP project will increase the security of supply, diversification and competition on the north western Balkan gas markets and due to IAP reverse flow capabilities the same contribution will be valid for the southern Balkan countries, including Albania.

Another important contribution expected by TAP is the creation of real opportunities for the development of the Albanian underground storage capacities already mentioned under §2.2.3.1, which will contribute to the operability and balancing of the system, enhancement of the security of supply and development of competition for Albania and neighbouring markets. For this reason the decision includes also an obligation on TAP that all exit points to be built in Albania shall will be bidirectional (see points 7 and 8 of §4.7).

TAP constitutes also an encouraging factor for oil and gas exploration activity in Albania as it constitutes an excellent opportunity for any future natural gas production to have access to European gas markets.

2.2.4 Southern-East Europe

2.2.4.1 current situation of natural gas supply infrastructure in Southern-East Europe

Gas market development stages in SEE vary significantly. Contracting Parties are on average much less developed, their markets range from non-existent (Montenegro, UNMIK) via only starting (Albania, FYR of Macedonia, Bosnia and Herzegovina) to intermediate (Croatia, Serbia). On the other hand EU countries in SEE are mostly well on their way and mature (Romania, Austria, Hungary, Italy), with Slovenia, Bulgaria and Greece lagging behind.[13]

2.2.4.2 Regulatory framework

The need for a coordinated and streamlined approach in developing gas markets in the Energy Community has been broadly recognized and is reflected in the so-called "Energy Community Gas Ring" concept. The "Gas Ring" concept aims at connecting all Contracting Parties via a ring considering also the needs of the region with regard to the electricity sector as well as the (existing or planned) regional pipelines, LNG terminals and storage facilities that could be connected to the Gas Ring. Regulators of the Energy Community strongly supporting the Gas Ring concept, the ECRB has

[13] "Regulatory Framework for the Development of the Energy Community Gas Ring" Discussion Paper on the Regulatory Instruments and Steps Necessary for the Development of the Natural Gas Market and Cross-Border Investments in the Energy Community 10 March 2010.

developed thinking on a possible common regulatory approach for the development of the Gas Ring in a related discussion paper, issued in 2008. Further a number of other studies and discussion papers have been carried out for the development of the gas market in the area including;

- Study on the Improvement of Interconnection, Interoperability, Transparency and Harmonization of Operational Rules for Natural Gas Transportation in the Energy Community;
- Recommendations for Funding Investments in the Energy Community Gas Ring (Energy Market Insights) The recommendations have received a political baking by the PHLG that encouraged regulators to continue considerations on possible regulatory regimes supporting the realization the Gas Ring.[14]

2.2.4.3 Contribution of TAP project to the Southern-East Europe market

Additional gas volumes from Caspian region via TAP are, from a European perspective, significant enough to reduce the dependency on Russian, Algerian and Norwegian gas, although this is different for individual countries, especially in south-eastern Europe and when considering pipeline imports as these would be diversified by extra Southern Corridor volumes. However, additional gas volumes from Caspian region via TAP also should replace some LNG imports mitigating the overall diversification effect as LNG imports may also be diversified to a large extend due to an expected large number of LNG exporting countries in 2019. In addition, TAP can be seen as an integrated part of the Western Balkan Energy Ring and it exploring possibilities for connecting with the Ionian Adriatic Pipeline (IAP). The IAP connection will allow TAP AG to provide gas in the whole of South Eastern Europe region, currently heavily dependent on one gas supplier. IAP is the most important regional project in the South Eastern Europe, which has received a support of the Energy Community and the European Commission. The IAP project is based on the idea to connect the existing and the planned Croatian gas transmission system, via Montenegro and Albania with the TAP system or a similar project. The total length of the gas pipeline from the Croatian town Split to Albanian town Fieri is 540 km. Its 5 bcm/year capacity provides the natural gas supply of Albania (1 bcm/year), Montenegro (0.5 bcm/year), the south of Bosnia and Herzegovina (1 bcm/year) and Croatia (2.5 bcm/year). The implementation of the entire Ionian-Adriatic Pipeline project enables opening of the new energy corridor for the SEE region within the fourth EU transmission corridor, with the aim to establish a new natural gas supply direction from the Middle East and Caspian region. The IAP will have a bi-directional gas flow possibility i.e., it will be able to provide natural gas supply of South Eastern Europe region from other sources. According to this point it is important to note that TAP project provides a link between the Italian gas market and the South-Eastern Europe gas market. The project will allow new entry capacity in the

[14] Regulatory Framework for the Development of the Energy Community Gas Ring" Energy Community 10 March 2010.

South eastern part of Italy (Puglia) for the connection of a new import pipeline from the Caspian Region. Furthermore if we consider that the investment regional plan of ENTSOG for the North-South Corridor, the TSOs of four countries (France, Switzerland, Germany and Italy) have proposed a number of project, including the reinforcement of existing national network of Italy for receiving the new entry capacity in the Southern part of this country, these projects can reverse the traditional flow north-south and this allow export of gas from Italy arriving also from the Caspian region to the hub of northern Europe.

In other words, TAP project will strongly contribute to market integration in South Eastern Europe. TAP will in fact create a first link between Italy, Albania and Greece, which is currently non-existent. In addition, TAP will contribute to the development of gas markets in South Eastern Europe. Given the several agreements already reached with TSOs in the Balkans and larger SEE area, TAP will be capable of connecting with countries in this area and to allow for new sources of gas to reach these markets and to further increase market liquidity. In the short term, TAP shall contribute to the development of the Albanian gas market, which is currently non-existent, and has the potential to eliminate its isolation from other gas markets in Europe. In addition, the increased interconnectivity created by TAP between South Eastern European countries and the rest of the European gas market will further boost regional cohesion and interoperability between transmission system operators in the region. TAP will therefore provide a crucial contribution to price convergence in the South Eastern Europe area.

TAP's physical reverse flow capabilities will contribute to market integration and interoperability. Currently, TAP physical reverse flow capabilities are estimated between 30% and 50% of its design capacity. Options for the construction of an underground storage in Albania will further increase flexibility in the gas transportation infrastructure of South Eastern Europe and security of supply in the region.

TAP will bring additional capacity to further strengthen the ability of both national and regional $N-1$. In relation to the national $N-1$, Italy and Greece (via physical reverse flow) will experience a sizeable contribution to their ability to meet the $N-1$ standard and to cope with supply disruptions. In relation to regional $N-1$, TAP will in the future provide a crucial contribution to the ability of the whole South Eastern Europe region to meet the $N-1$ standard once the interconnections with TSOs in the area are in place (Croatia, Albania, Bosnia, Montenegro and potentially Bulgaria once the interconnection between Greece and Bulgaria is built).

2.3 Building of Expansion capacity

Following the figures provided by TAP AG, the Expansion Capacity of TAP is built by adding compressor stations varying in size at different sections of the pipeline to increase the pressure.

The Authorities consider that there is a lot of technical and economic flexibility to adapt the transport capacity of TAP according to binding capacity bookings, which is crucial to ensure that TAP increases competition and security of supply in all relevant

markets. With respect to competition, there is a risk that the restriction to indicative construction steps favours large capacity requests by large market players over the requests by smaller market players and may thus have a significant negative impact on the development of competition on the relevant natural gas markets. Moreover, there is a risk that smaller markets along the TAP may not be served and that the TAP may thus not enhance the security of supply in the markets concerned. For this reasons, Authorities believe that an obligation to build Expansion should be imposed to TAP AG (except in the case that the expansion is for very small quantities), while any request to review technical and economical feasibility should be notified and justified to Authorities.

2.4 Tariffs

The principle of a uniform Tariff, described in §1.3.6, irrespective of the fact that it is forward or reverese flow, Initial or Expansion Capacity is designed to avoid that initial shippers would have a reduced incentive to book capacity since the first stage and to avoid discrimination between new and old shippers. Moreover, the decreasing level of Tariffs, ensures an increasing competitiveness of the infrastructure if Expansion Capacity is built.

However, the Authorities believe that the allocation of Expansion Capacity should be according to market procedures. In this case, users pay what they are willing to (and not the TAP Tariff). To address TAP AG concerns that initial shipper should not be disincentivised from booking the capacity since the first stage, the reserve price of the auction should be set at the level of TAP Tariff. In this case users of Expansion Capacity pay at least the TAP Tariff or a higher one if some congestion appears in the auction.

Revenues above the TAP Tariff must be collected by Authorities and redistributed to end users, according to some criteria to be decided by the Authorities.

As far as Reverse Capacity is concerned, especially for virtual reverse flow, as there are no additional costs, Authorities believe that market procedures should start at a very low reserve price, for example 5% ot the TAP Tariff. This solution could be more efficient than the one proposed by TAP AG as it doesn't put undue barriers to users in contracting reverse capacity.

As TAP AG will offer different products (different duration and different entry or exit points), each product should be quoted separately. Therefore, TAP Tariff methodology proposed by TAP AG should also be specialised accordingly.

Finally, the proposed methodology must be considered indicative, as it must be carefully assessed by Authorities, once the exact figures are known.

2.5 Unbundling

In line with the Gas Directive (Article 9.1), TAP AG should apply ownership unbundling rules. Ownership unbundling obliges Member States to ensure that the same person or persons are not entitled to exercise control over a production or supply undertaking and, at the same time, exercise control or any right over a transmission system operator or

transmission system. Conversely, control over a transmission system or transmission system operator should preclude the possibility of exercising control or any right over a production or supply undertaking. However, ownership unbundling — as much as Third Party Access and tariff regulation — may undermine the commercial viability of a new interconnector if it enhances the risks of the project promoters not to recoup their investment costs and an adequate return on equity. TAP AG shareholders are major energy players, performing functions of production or supply, directly or through subsidiaries, in European gas and electricity markets. If ownership unbundling applied in the present case, they would have to sell their shares in TAP AG to a third party. As the outcome of such a sales process cannot be predicted with sufficient certainty, it is plausible that investors may refrain form the investment in TAP project.

At this stage, the implementation of ownership unbundling provisions would indeed heavily undermine the basic business model of the Project and, as a consequence, the shareholders would not be prepared to commit to the investment.

Allowing exemption from ownership unbundling is therefore a prerequisite for the investors to pursue in the investment decisions. Nonetheless, there are negative effects of lifting — without further conditions — the obligation to ownership unbundling for the ability of third party suppliers to gain non discriminatory access to the capacity, especially where it is not fully exempted from third party access. In fact, TAP AG is the owner and operating company for the new "Trans Adriatic Pipeline" and at the same time it is a part of a vertically integrated undertaking in the meaning of Article 2.1 n. 20) of Gas Directive and Article 2.1 n. 21 of Directive 2009/72/EC.

Therefore, a different unbundling regime needs to be applied to break the inherent conflict of interest of the gas/electricity vertically integrated undertaking and needs to be imposed as a condition to the granting of exemption from ownership unbundling.

Part 3

Article 36.1 criteria assessment

The present *Part* of the paper is focused on the analysis of how the criteria of Article 36.1 of the Gas Directive are fulfilled, supported by data and considerations in *Part 1* and *Part 2*. Whenever necessary, references to Part 4 (i.e. to the decisive part of the document) will be made, with the view to better explain how the conditions imposed by the Authorities have safeguarded the fulfillment of the criteria of Article 36.1 of the Gas Directive.

3.1 Eligibility of the request

> *"Major new gas infrastructure, i.e. interconnectors, LNG and storage facilities, may, upon request, be exempted, for a defined period of time, from the provisions of Articles 9, 32, 33 and 34 and Article 41(6), (8) and (10) [of the Gas Directive]"*

The proposed TAP pipeline is an interconnector stretching over three countries; two EU Member States and one Contracting Party to the Energy Community Treaty[1].

Taking into account that the pipeline is still at a planning stage but will be connected to the existing or future networks in all three countries, according also to the conditions imposed with the present decision, the TAP pipeline is indeed considered as a major new infrastructure and, in particular, an Interconnector, according to the provisions of Article 36.1. It may, therefore be considered as eligible for exemption under the provisions of Article 36, as long as the exemption decision fulfills the criteria set by the same Article of the Gas Directive.

3.2 Competition and Security of supply

> *"The investment must enhance competition in gas supply and enhance security of supply"*

[1]The definition of the term *interconnector* is the same in both the 2nd Directive 2003/55/EC and the Gas Directive.

3.2.1 Competition

To analyse the competitive effect of the infrastructure, the relevant upstream and downstream gas markets, and in particular the question whether the investment leads to the creation or strengthening of dominant market positions, have been considered in §2.2. As a general rule, an exemption is not granted to a new piece of infrastructure that is likely to have a significant amount of its capacity allocated to dominant players in one of the markets affected or which would not safeguard non-discriminatory access to all market participants who express their interest in reserving capacity in the infrastructure. The Authorities believe that granting an exemption to TAP AG, under the specific terms and conditions imposed through the present decision enhances competition, for the following reasons:

1. A Market Test has been launched, following the provisions of the Gas Directive, according to Guidelines which have been jointly approved by the Authorities, with the view to provide to all interested parties the opportunity to have access to the capacity of TAP, on equal terms and conditions with the shareholders of TAP AG. The same Guidelines determine the steps for the conclusion of the Market Test, under terms and conditions to be further jointly approved by the Authorities and such an obligation has been incorporated in the present decision. The validity of the Market Test has been revealed by the enhanced participation of gas entities in the corresponding Expression of Interest Phase (see Part 2 for details).

2. As the Expression of Interest Phase of the Market Test has revealed, the majority of the entities interested to use TAP for the transportation of their gas volumes to their corresponding places of consumption are aiming at gas sources which are different from the traditional sources of gas currently imported in the European Union. By the present decision, following the conclusion of the Market Test, such entities will have the opportunity to import these gas volumes to the EU and the Balkans, thus enhancing gas-to-gas competition.

3. Granting an exemption to TAP AG could lead to deterioration of competition if it were not accompanied by measures which would allow third parties to have access to the capacity of TAP for their own use, on the same terms and conditions to the ones that the recipients of the exemption had. Therefore, the Market Test will be concluded, following the implementation of the corresponding obligation imposed on TAP AG by the Authorities (see point 5 of § 4.1), thus allowing all entities which expressed their interest in the Expression of Interest Phase of the Market Test to have access to TAP, from the same date and at the same terms and conditions (e.g. tariffs, access terms and gas transportation agreements) with the holders of the exempted capacity. In addition, the obligation imposed on TAP AG to implement those provisions of the Gas Regulation that are not contradicting with the terms of the exemption granted (see §4.6 and point 1 of §4.7), as well as the obligation for certification and independence imposed on TAP AG with the present decision (see §4.5) minimize the possibility of hindering competition

in the use of capacity, especially since it is combined with the obligation to offer short-term capacity products in the market (see point 10 of §4.1)

4. In addition, frequent market tests are imposed on TAP AG following its Commercial Operation Date, as well as a corresponding obligation to expand the capacity. (see points 5, 7 and 8 of §4.1).

5. The obligation to transfer the exempted capacity (up to a maximum of 50% of the Total Capacity of TAP) to all future buyers of the Shah Deniz II gas is also imposed on TAP AG, with the view to create no discrimination against all entities which expressed their interest for these volumes in the EoI Phase of the Market Test (see point 3 of §4.1).

6. Regarding competition of supplies in the destination markets, TAP AG shareholders and Shah Deniz Consortium shareholders have a limited or null presence in the countries where exit points are located (see §1.2, §2.2.1.3, 2.2.2.3, 2.2.3);

7. In general, in order to ensure that enhancing competition is effective, the transfer of capacity to a dominant player should be forbidden or limited to certain conditions. To this end, specific provisions are introduced (see point 2 in §4.7), to ensure that current and/or future dominant players (gas producers and/or shippers) active the Italian market do not acquire capacity at the TAP exit points in Italy above a certain threshold.

8. With reference to Italy, the most developed destination market, the proposed transportation capacity of TAP is significant compared to domestic consumption, so the impact of the new volumes is not negligible; however none of the holders of capacity in TAP would become dominant, even if the entire capacity of the TAP pipeline were allocated to one, which is not the case in the present decision (see §2.2.1.1 and §2.2.1.3 also §4.1 and point 2 of §4.7)

9. TAP contributes to the establishment of a new potential market in Albania and to the further development of the, still developing, market in Greece. However, taking into account the size of these markets, as well as the existing gas market structure and the relevant market players (see §2.2.2.3 and §2.2.3.3) it seems probable that gas transported through TAP may lead to the establishment of future dominant suppliers in Albania and/or to the reinforcement of existing dominant positions in Greece. Therefore specific terms and conditions should be imposed to capacity holders at the future exit points of TAP in both countries (as provided for in points 4, 5, 7 and 8 of §4.7), with the view to prevent the development of such dominant positions. These conditions are described in points 6 and 9 of §4.7 and include capacity caps for new suppliers through TAP in Albania, for as long as Albania will be an emergent gas market, according to the Gas Directive, supplemented by combined gas and capacity releases for the cases where underutilization of capacity may lead to the need of allocation of capacity to dominant suppliers. Even stricter capacity caps are imposed at the Greek exit points,applicable not only to suppliers

who already enjoy a dominant position (currently DEPA S.A.), but also for any potential future case where two or more suppliers obtain a collective dominant position in the market (see provision (ii) under point 6 in §4.7).

As analysed in §2.2.2.3, there is indeed a prominent risk of one shipper attaining a considerable portion of capacity at a TAP Exit Point in Greece and thus acquiring, or reinforcing, a market dominant position. By extension, as analysed in §2.2.3.3, a similar argument can be well valid in Albania. A capacity cap at all Greek/Albanian exit points coupled with an obligation of gas/capacity release as provided for in §4.7 is considered as necessary to safeguard competition.

10. What is very important for the development of competition not only in Greece and Albania, but also for the gas market in South East Europe, is the treatment of reverse flow through TAP. Granting and exemption to TAP AG from third party access provisions for reverse flow, would, to a great extent, deteriorate competition and create the conditions for market foreclosure. On the contrary, should the reverse flow capacity is made available to third parties at regulated tariffs, this would greatly enhance competition, even if the forward flow capacity of TAP is exempted. To this end, the request of TAP AG to grant an exemption from third party access rules, as well as from regulated tariffs should be rejected (see §4.4)

11. Shippers are free to import gas to Italy and transport it to other European markets, so the benefit of competition can be extended to other European countries (see §2.2.1.2);

12. TAP will facilitate the development of a gas hub in Italy, attracting new operators and increasing liquidity for all three countries involved and the wider SEE region (see §2.2.1.4). In addition, the operation of TAP under the conditions imposed with the present decision facilitates the development of a hub-to-hub market operation between Italy and the South East Europe, which enhances competition and facilitates the incorporation of the region to the Internal Energy Market.

13. TAP will also facilitate the development of the Energy Community Gas Ring that, besides Albania, will contribute to the gasification of countries not having any gas yet (Montenegro, United Nations Interim Administration Mission in Kossovo) and the development of competition and diversification for the other Contracting Parties (Bosnia and Herzegovina, Croatia, FYR of Macedonia, Serbia).

3.2.2 Security of Supply

The Authorities agree that, in principle, any new gas infrastructure enhances security of gas supply. This general principle is even more enhanced when this new infrastructure contributes to gas supplies from new sources of gas and from new gas suppliers. It is evident that TAP AG fulfills all these requirements. In addition, the assessment of the security of supply criterion in each of the three countries involved can be described as follows.

Italy – TAP contributes to the Italian market with a new long-term supply from at least a new source of gas. Diversification of supplies is one of the most effective strategy for ensuring both affordable prices in the long run and security of supply under emergency conditions. As highlighted in §2.2.1.1 there can still be critical situations related to peak capacity limiting balancing capabilities within the gas-day. TAP contributes with a significant amount of capacity to mitigate the problem.

Albania – TAP's contribution to the security of supply for Albania is obvious. As already explained under §2.2.3.1, Albania is experiencing a steady growing energy demand and has high dependence on hydro resources while its gas market is very underdeveloped due to the decline in indigenous production and the lack of cross border pipeline. TAP represents an excellent opportunity that a new primary source is added to Albania's energy mix. The imposed condition for the initial construction of at least one exit point in Albania to meet a minimum level of demand (see point 7 in §4.7) safeguards gas supplies for the country from the very start of TAP operations. In addition following subsequent market test and binding demands, TAP has the obligation to expand its exit capacities to Albania (see point 8 in §4.7). From a completely isolated and premature market, TAP will connect Albania immediately with two important gas markets of Italy and Greece and a variety of gas supply sources. Such interconnectedness will enable Albania to enjoy the benefits of competition. TAP will also create conditions for future connections of Albania with other Balkan gas markets (IAP project) and the development of underground storage capacities.

Greece – In addition to the extensive analysis of §2.2.2.4 on the positive impact TAP may have on the Greek gas market, both regarding security of supply and competition, one should stress that the conditions imposed with the present decision will safeguard that TAP will facilitate the development of new connection points to the existing Greek NNGS, even from the onset of its operation, with the view to safeguard the maximum contribution of TAP to the security of supply of the Greek gas market (see point 4 of §4.7) In addition, an obligation is imposed on TAP AG to build additional entry and exit points in Greece, as a result of market interest in the future (see point 5 of §4.7). It should also be mentioned that, should TAP AG decides to ultimately connect to the anticipated TANAP project at the Greek–Turkish border, instead of the currently proposed connection to the Greek NNGS at Komotini, the immediate result will be the enhancement of the interconnection capacity between the Greek and Turkish networks by a factor of almost three, with obvious advantages for the future gas market of the whole region and Europe. Should this happen, the Greek gas market will obtain two (instead of one) new entry points, one from Turkey and one from Italy, with a very positive impact on the security of supply for Greece and all neighbouring countries, especially regarding the fulfillment of the provisions of Regulation 994/2010.

Southern-East Europe – TAP opens a reliable and significant import route for gas from the Caspian Region, but also from Italy and the gas sources thereof, according

to the provisions of the present decision. This will improve Security of Supply in Southern Europe, creating a new physical bridge to import gas in Europe and reduces transportation transit risk. Moreover, it brings new gas volumes to (new or anticipated) gas hubs, fostering liquidity and competition in the wholesale markets and diversifies the sources of gas for the countries put most at risk in the 2006 and 2009 supply disruptions.

On the basis of the foregoing considerations, the TAP pipeline is considered to enhance the security of gas supply for the Italy, Albania, Greece and EU as a whole.

3.3 Level of risk

"The level of risk attached to the investment must be such that the investment would not take place unless an exemption was granted"

In assessing the risks of the project, taking into consideration TAP AG's considerations expressed in §1.3.3 the Authorities consider the following.

Under a typical regulated-access regime, the owner of the infrastructure (the "national TSO") enjoys a large degree of revenue certainty and protection from volume-associated risks or construction risks, given that its investments are planned (and therefore approved) through the corresponding development plan and the revenues guaranteed through regulated tariffs to be paid by the rate-payers of the infrastructure itself. This mechanism ensures the compatibility between the size of the project and the level of the resulting tariffs, usually through the economic test which accompanies the approval for the development of the infrastructure.

TAP is a commercial initiative of its shareholders, not incorporated or imposed by any national development plan of any of the three countries involved. Clearly, the size of the TAP project, especially compared to the national markets of Greece and Albania, is such that volume or other risks cannot be borne by the users of the national gas systems i.e. under a regulated TPA regime, without undermining the viability of the corresponding national systems. Therefore, provided all other criteria, as set by Article 36 of the Gas Directive, are fulfilled, financial isolation of the new infrastructure from the regulated systems and confinement of risks to the shareholders of TAP is fully justified.

In addition, the bankability of the project strongly depends on the volume and revenue risk, the volatility of which would have the result of putting the required predictable minimum stream of revenues necessary for the bankability of the project in jeopardy.

In accordance with the Expression of Interest results, adequate volumes with adequate degree of certainty can [*omissis*][2] be secured from Shah Deniz II. [*omissis*][3]

sufficient evidence has been provided by the Shah Deniz Consortium on the availability of sufficient volumes and at a suitable time and duration for TAP to take an Final Investment Decision for the Initial Capacity as scheduled. Therefore the volume risk is

[2]This paragraph contains confidential data.
[3]This paragraph contains confidential data.

significantly reduced if volumes for the Initial Capacity are directly reserved for Shah Deniz II gas.

Any additional volumes from different origins would be transported through the Expansion Capacity of TAP. [*omissis*][4] This [*omissis*][5] would increase the overall risk attached to the realization also of the Initial Capacity of the project, and, therefore, the investment would not take place unless an exemption from TPA was granted for 50% of the Total Capacity.

Despite the fact that gas volumes' availability is secured, to a significant degree, by reserving Initial Capacity to Shah Deniz II volumes, in order to ensure actual utilization of the infrastructure, a capacity allocation and tariff setting mechanism (that goes far beyond the regulatory regime as defined in the EU acquis communautaire) must be applied for the TAP project. The main characteristics of this capacity allocation and tariff setting mechanism are summarized below:

- Initial allocation of Initial Capacity to TAP shareholders (existing and future) in proportion to their shareholding.
- After the selection of buyers of the Shah Deniz II gas volumes, capacity re-allocation from TAP shareholders to final Shah Deniz II buyers, in line with their gas supply agreements with Shah Deniz II.
- Long-term ship-or-pay contracts for 25 years for the original TAP route corresponding to the Initial Capacity of TAP.
- Stable cost-reflective tariffs for the whole duration of the contracts, at a rate of return that makes the project financeable, periodically adjusted downwards as a result of additional reservation of capacity contracted in TAP through the frequent market tests to be imposed on TAP, under an NPV=0 concept.

The Authorities conclude that the arrangements necessary for the reduction of risk to levels acceptable to the owners of TAP AG and to the financial institutions, require an exemption from the regulatory regime, under the specific terms and conditions that are imposed, as presented in *Part 4* of this document. In addition, the regulatory governance imposed by the Authorities in *Part 4*, increase the regulatory certainty and provide sufficient legal risk mitigation for TAP in the long run, in full compliance with the existing European legislation for energy.

3.4 Separation from existing TSOs

> *"The infrastructure must be owned by a natural or legal person which is separate at least in terms of its legal form from the system operators in whose systems that infrastructure will be built"*

[4] This paragraph contains confidential data.
[5] This paragraph contains confidential data.

The anticipated interaction between TAP AG and the TSOs in the three countries concerned can be briefly assessed as follows:

Italy – The system operator of the gas system to which TAP will connect in Italy is SNAM Rete Gas S.p.A., the company certified as Independent Transmission Operator (according to the Gas Directive definition), operating the national gas network. SNAM Rete Gas is entirely held by the holding SNAM S.p.A. SNAM S.p.A.'s shareholders are: 30% Cassa Depositi e Prestiti Reti[6], 20.23% ENI, 38,26% institutional investors, 9,82% retail investors, 1,69% others[7]. TAP AG's shareholders don't have any shares in SNAM S.p.A.

Greece – The system operator of the gas system to which TAP will connect in Greece is DESFA SA, presently 100% owned subsidiary of DEPA SA. None of TAP AG shareholders have any shares in DEPA SA.

Albania – The system operator to which TAP could connect in Albania is Albpetrol sh.a. It has been just established and has not become operational yet. None of TAP AG shareholders has any share in Albpetrol sh.a.

Therefore it can be concluded that the TAP also fulfills the third criterion of the Gas Directive, as TAP AG is a separate and independent legal entity from the relevant and existing system operators SNAM Rete Gas S.p.A. and DESFA SA.

3.5 Charges

"Charges must be levied on users of that infrastructure"

As discussed in previous §1.3.6, access to transmission capacity is subject to TAP Tariff methodology. The latter is subject to the Authorities' approval (see point 1 of §4.2 and points 2, 3 and 4 of §4.4). Therefore no charges relating to the Project will be imposed on consumers in any of the host countries of TAP. Therefore TAP meets the fourth criterion of Article 36.1 of the Gas Directive.

3.6 The exemption must not be detrimental to competition or the effective functioning of the internal market

"The exemption must not be detrimental to competition or the effective functioning of the internal market in natural gas, or the efficient functioning of the regulated system to which the infrastructure is connected"

[6]Cassa Depositi e Prestiti is a joint-stock company under public control, with the Italian government holding 70% and a broad group of bank foundations holding the remaining 30%. Cassa Depositi e Prestiti is the main shareholder of major public Italian companies operating in Italy and abroad.

[7]Information updated to decembre 2012

The impact on competition, as well as the conditions imposed by the Authorities to safeguard that competition is enhanced, as well as to prevent the establishment of conditions that could hinder competition throughout the operation of the TAP pipeline have been analyzed in detail in §3.2.1 above.

The project has no negative impact on any existing national network: as indicated in §1.1.3 TAP has concluded a tie-in agreement with SNAM Rete Gas S.p.A.

Regarding the mitigation of the impact the present exemption decision for TAP might have on the efficient operation of the regulated systems to which TAP is going to be connected, as well as on the effective operation of the internal market, the following provisions have been imposed:

1. The Guidelines of the Market Test have been such that maximize the possibility of interconnections of TAP with other systems. This was also proved by the interest expressed in the Expression of Interest Phase, not only from market participants, but also from governments and other entities (e.g. IAP Steering Committee) for the future connection of TAP to other gas infrastructures in the wider region of South East Europe. Such conditions may be regarded as a precedence for the future market tests TAP AG is obliged to perform, following the approval of the Authorities (see point 7 of §4.1).

2. The conditions imposed on TAP (see for example points 4, 5, 7 of §4.7) guarantee that TAP will serve as an interconnector both of the existing but also of any future infrastructure that may be developed in the SEE region, as long as something like that is technically and economically feasible.

3. The obligation imposed on TAP to perform any such expansions or future connections in close cooperation with the TSOs of the systems to which TAP is going to be connected, under the supervision of the Authorities (see, for example, point 4 of §4.7), as well as the obligation to implement the provisions of the Gas Regulation (§4.6 and point 1 of §4.7) — as long as they do not contradict to the provisions of the present decision — safeguard not only the efficient operation of the existing and future systems TAP is going to be connected to, but also the effective operation of the Internal Market of the EU and the incorporation of TAP to the wider pan-European gas network.

4. The rejection of the request of TAP AG to be exempted from the provisions of third party access for the reverse flow, with the corresponding obligation for a very low tariff for the reverse flow products (see §4.4), safeguards the regulated physical connection of the gas markets in the South East Europe region with that of Italy. This will enhance market integration and competition and will facilitate the incorporation of the SEE region to the EU Internal Energy Market.

Preface to Final Joint Opinion

Hereafter the final Joint Opinion adopted by the Authorities after the amendments requested by the European Commission concerning Part 4 of the original Joint Opinion is included. The amendments requested by the European Commission incorporate also the suggestions of the Energy Community Secretariat.

1. On 29 August 2011 and on 31 August 2011, TAP AG submitted to the Italian Ministry of Economic Development (Ministero dello Sviluppo Economico, hereinafter, "MSE") and to the Regulatory Authority for Energy of Greece (hereinafter, "RAE") respectively, an "Exemption Application for *Trans Adriatic Pipeline*" (hereinafter, "Exemption Application"), as foreseen by Article 36 of the Gas Directive 2009/73/EC.

2. On 1 September 2011, TAP AG submitted the Exemption Application to the Energy Regulatory Entity (hereinafter,"ERE") of Albania, in accordance with Article 22 of the Gas Directive 2005/54/EC.

3. On 28 February 2013, RAE, adopted Decision No 111/2013, on the *"Exemption of TAP AG from the provisions of Articles 9, 32 and 41(6), (8) and (10) of Directive 2009/73/EC on the Trans-Adriatic Pipeline (TAP)"* (hereinafter, "Greek Exemption Decision"). The Greek Exemption Decision was notified to the European Commission (hereinafter, "Commission") in full on 9 March 2013.

4. On 28 February 2013, Autorità per l'energia elettrica e il gas (hereinafter "AEEG", from Italy) adopted Resolution No 78/2013/R/gas on the *"Exemption of TAP AG from the provisions of Articles 9, 32 and 41(6), (8) and (10) of Directive 2009/73/EC on the Trans-Adriatic Pipeline (TAP).*"

5. On 1 March 2013, ERE, adopted Decision No 27 on the *"Exemption of TAP AG from the provisions of Articles 9, 32 and 41(6), (8) and (10) of Directive 2009/73/EC on the Trans-Adriatic Pipeline (TAP)"* (hereinafter, "Albanian Exemption Decision"). The Albanian Exemption Decision was notified to the Secretariat of the Energy Community (hereinafter,"Secretariat") in full on 6 March 2013.

6. On 13 March 2013, the MSE adopted a specific Decree concerning the exemption of TAP AG from the provisions of Articles 9, 32, 33, 34 and 41(6), (8) and (10)

of Directive 2009/73/EC on the Trans-Adriatic Pipeline (TAP) (hereinafter, "Italian Exemption Decision"). The Italian Exemption Decision was notified to the Commission on 15 March 2013.

7. Both the Greek Exemption Decision and the Italian Exemption Decision (hereafter referred as "Exemption Decisions") were notified to the Commission together with a document entitled *"Joint Opinion of the Energy Regulators on TAP AG's Exemption Application - Autorità per l'energia elettrica e il gas(Italy), Enti Regullator i Energjise (Albania), Ρυθμιστική Αρχή Ενέργειας (Greece)"*(hereinafter, "Joint Opinion"), dated 28 February 2013, which therefore forms an integral part of the Exemption Decisions.

8. The Albanian Exemption Decision was also notified to the Secretariat together with the Joint Opinion which therefore also forms an integral part of the Albanian Exemption Decision.

9. The Joint Opinion results from the agreement reached by the Regulatory Authorities of Italy (AEEG), Albania (ERE) and Greece (RAE) to review jointly the application and to express the result of this assessment in one single Opinion, based on the criteria of Article 36(1) of Directive 2009/73/EC, supported by the market test results and further considerations agreed among these three authorities. The MSE requested AEEG to define, jointly with the Greek and Albanian Regulatory Authorities, the procedures for the Market Test and provide an Opinion to the Ministry.

10. On 27 February 2013 and 23 April 2013, the Commission services met with the Authorities to discuss the case.

11. On 27 March 2013, the Commission services addressed to MSE and RAE a request for additional information, in order to allow a full assessment of the Exemption Decisions. This information was provided on 5 April 2013 (MSE ref. 0007132 05/04/2013, RAE ref. O-54607/05.04.2013). Following the state-of-play meeting with the Regulatory Authorities on 23 April 2013, and in response to additional questions raised by the Commission, the Authorities provided additional information, respectively, on 23 April 2013 (RAE ref. O-54720/23.04.2013) and 26 April 2013 (MSE ref. 8617 26/04/2013).

12. On 2 April 2013, the Secretariat addressed to ERE a request for additional information, in order to allow a full assessment of the Exemption Decisions. This information was provided by ERE on 8 April 2013. Following the state-of-play meeting with the Regulatory Authorities on 23 April 2013 and in response to additional questions raised by the Secretariat further information was provided by ERE to the Secretariat on 29 April and 2 May 2013.

13. On 23 April 2013, the Greek Authority (RAE), upon the request of the Commission, agreed by common consent to extend the initial two-month period for

taking an exemption decision by the Commission to 16 May 2013 (RAE ref. O-54711/23.04.2013). Consequently, the date of adoption of the Commission Exemption Decisions addressed respectively to the Italian and Greek Authorities was aligned to be 16 May 2013.

14. On 6 May 2013, the Albanian Regulatory Authority (ERE), upon the request of the Secretariat, agreed by common consent to extend the initial two-month period for the publication of the Secretariat's Opinion on the ERE's Exemption Decision (ERE Joint Opinion) to 14 May 2013. Consequently, the date of publication of the Secretariat Opinion addressed to the Albanian Authority was aligned to be 14 May 2013.

15. On 14 May 2013, the Secretariat of the Energy Community adopted its Opinion on the exemption of the Transadriatic Pipeline (N. 1/2013). This Opinion was formally communicated to the Regulatory Authority of Albania (ERE) By its decision the Secretariat of the Energy Community invited ERE to amend the conditions under points 4.1.3, 4.1.6, 4.7.7 and 4.7.8 of Part 4 of the Joint Opinion. The latter two amendments are country specific, with relevance to Albania only and are related to the obligation to expand existing and/or build additional entry and exit points in Albania and to capacity caps for dominant players in Albania.

16. On 16 May 2013, the Commission adopted its decision (C(2013)2949 final) on the exemption of the 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).

    By its decision the Commission requests

    - the Regulatory Authority for Energy of the Hellenic Republic (RAE) to amend, in accordance with Article 36(9) of Directive 2009/73/EC, its Decision No 111/2013 of 22 February 2013 (the Greek Exemption Decision), as notified to the Commission on 9th March 2013.
    - the Italian, Ministero dello Sviluppo Economico (MSE) to amend, in accordance with Article 36(9) of Directive 2009/73/EC, its Decree of 13 March 2013 concerning exemption of TAP AG from the provisions of Articles 9, 32, 33, 34 and 41(6), (8) and (10) of Directive 2009/73/EC on the Trans-Adriatic Pipeline (TAP) (the Italian Exemption Decision), as notified on 15 March 2013 to the Commission.

17. The amendments requested by the European Commission concern Part 4 of the Joint Opinion and in particular the conditions under points 4.1, 4.1.2, 4.1.3, 4.1.5, 4.1.6, 4.1.8, 4.1.10, 4.2, 4.3, 4.4, 4.5, 4.6, 4.7.2, 4.7.4, 4.7.5, 4.7.10 and 4.9. The amendments requested by the European Commission under points 4.7.2, 4.7.4 and 4.7.5 are country specific with relevance to Italy and Greece only as EU Member States. The amendments requested by the European Commission under points

4.1.3, 4.1.6 and 4.7.7 incorporate the suggestions of the Energy Community Secretariat.

- HAVING regard to paragraph 9 of Article 36 of Directive 2009/73/EC,

- HAVING regard to the Commission Decision [C(2013)2949 final] dated 16 May 2013 on *the exemption of the 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)*,

- HAVING taken note of the Opinion 1/2013 of the Energy Community Secretariat dated 14 May 2013.

The Regulatory Authorities of Italy, Albania and Greece, jointly agree on the modification of Part 4 of the Joint Opinion as follows.

Part 4

Authorities' final joint opinion

This *Part* contains the decision of the Authorities on the exemption request and the terms and conditions under which the exemption is granted.

Having regard to the assessment of the Exemption Application of TAP AG, as presented in the previous *Parts* of this document, the Authorities have the opinion that, under the specific terms and conditions detailed in the following paragraphs, an exemption from TPA should be granted for the Initial Capacity (i.e. a maximum of 50% of the Total Capacity of the Project) to the shareholders of TAP AG and to allocate the Expansion Capacity (i.e. remaining 50% or more of the Total Capacity of the Project) to the market through the Booking phase of the Market Test currently under progress and, if not allocated, in subsequent market tests. The allocation of both the Initial and the Expansion Capacity will be subject to the same capacity caps as envisaged by the Authorities in the Joint Opinion and amended in line with the Commission's decision.

With reference to each requested exemption by TAP AG as described in §1.3.1, the Authorities jointly express their opinion as follows.

4.1 Initial Capacity, forward flow: exemption from the requirement of Article 32 of the Gas Directive (TPA)

This opinion is made with reference to the request at point 1a of §1.3.1.

An exemption from the provisions of Article 32 of the Gas Directive for the Initial Capacity should be granted to TAP AG, for the forward transportation of natural gas from the actual TAP entry point in Greece to its exit point in Italy, for a period of 25 years starting from beginning of the Commercial Operation Date, subject to the following conditions:

1. *Origin of gas* – The Initial Capacity will be dedicated to the transportation of gas volumes to be procured by Shah Deniz II gas, according to the business plan of TAP AG, as included in the Exemption Application. Any deviation from this principle will not be possible without prior approval by the Authorities.

2. *Initial allocation* – As requested by TAP AG, the Initial Capacity will be allocated to the shareholders of TAP AG at the time of granting this opinion (Shareholders as for §1.2.1, i.e. Statoil ASA (42,5%) Axpo E.On Ruhrgas AG (15%), hereinafter "Current Shareholders"), in proportion to their shares in TAP AG.

3. *Legal procedure of transferring the Initial Capacity* – Any buyer of Shah Deniz II gas, or any shipper on his behalf, shall be entitled to such part of the Initial Capacity that corresponds to its share in the Shah Deniz II gas quantities to be transported through TAP. To this end, once the Shah Deniz Consortium announces its final decision regarding the buyers of the quantities of Shah Deniz II gas to be transported through TAP, the current Shareholders of TAP AG will undertake all appropriate legal actions to transfer[1], in part or as a whole, as the case may be, the capacity rights and obligations allocated to them under point 2 above, to those buyers (or their nominated shippers), upon a request of the latter. Within three months from the date that the present decision becomes effective, according to the provisions of the Directive 2009/73/EC, TAP AG will submit for approval to the Authorities, or the national competent authorities, as the case might be under the relevant national legislation, a proposal for the legal procedure under which this transfer of capacity will be implemented. The legal procedure will ensure that transfers are made based on equal terms and conditions for all buyers of Shah Deniz II gas. The Authorities, or the national competent authorities as the case might be, will decide on the legal procedure described above within one month from the date of the submission of the relevant proposal by TAP AG. The approval of the Authorities, or the national competent authorities as the case might be, is deemed granted, if, upon expiration of the deadline above, no decision has been issued. Upon approval of this procedure, subject to provisions of points 2, 6 and 9 of §4.7, the transfer of capacity will be implemented within a month from the date that a final shipper of Shah Deniz II gas will so require from TAP AG.

4. *Final Allocation of Initial Capacity to Shah Deniz II gas buyers and release of Residual Initial Capacity to the Market* – Immediately after the conclusion of the procedure above, TAP AG will inform the Authorities on the part of the Initial Capacity finally allocated for the transportation of Shah Deniz II gas volumes, the final list of buyers and their shippers and the amount of capacity allocated to each.

   In case that the part of the Initial Capacity allocated for the transportation of Shah Deniz II gas volumes is less than 10 bcm/year, the remaining part up to 10 bcm/year (hereinafter referred to as Residual Initial Capacity) will be made available to the market through the first Booking phase according to the provisions of points 5 and 6.

5. *Obligation to perform the first Booking phase and to build the capacity requested* – No later than three months from the date of the Final Investment Decision, TAP AG will proceed with the second phase of the Market Test as per the Guidelines

[1] According to TAP AG letter as for §1.4.6.

(i.e. the Booking phase). In this first Booking phase, the Expansion Capacity plus the Residual Initial Capacity will be allocated through auctions and in accordance to the provisions of points 2, 6 and 9 of §4.7. The products offered must be consistent with the result of the Expression of Interest phase, i.e. of different duration, including a duration of less than 25 years, down to at least 5 years to be defined in line with methods similar to those applicable to non-exempted capacity. The guidelines of this first Booking phase have to be approved by Authorities. TAP AG will ensure that any capacity reserved as a result of the Booking Phase will be built and become available to the corresponding shippers not latter than 6 months from the Commercial Operation Date of the TAP pipeline.

6. *Participation in the first Booking phase* – All participants to the Expression of Interest phase are allowed to participate to this first Booking phase subject to the same capacity caps as envisaged by the Authorities in the Joint Opinion (as amended in line with the present Commission Decision and Secretariat opinion).

   TSOs from Albania, Greece and Italy can participate to this first Booking phase, irrespective of their participation in the Expression of Interest phase on the same conditions applying to all other participants of the Expression of Interest phase. TSO participating must have been certified in accordance with each participating country's obligations under Directive 2009/73/EC, and may not use the capacity booked for gas supply.

7. *Obligation to perform subsequent market tests* – TAP AG is obliged to perform other Market Tests on a regular basis starting from no later than the Commercial Operations Date and, subsequently, at least every two years. TAP AG will perform the Market Tests, under guidelines to be approved by the Authorities, with the view to offer to all interested parties additional available capacity up to the Total Capacity.

8. *Obligation to build Expansion Capacity* – In order to fulfil the binding capacity requests resulting from each market test described in point 7, TAP AG will extend the capacity of the pipeline. TAP AG is obliged to build additional capacity, above the Initial Capacity, in order to accommodate the binding capacity requests resulting from each market test taking into account the provisions of points 2, 6 and 9 of §4.7. TAP AG shall enter into a binding agreement to have the requested capacity constructed no later than 2 months following the closing date of the market test. If TAP AG considers that, in spite of such binding capacity requests, a pipeline expansion is not economically viable, TAP AG is obliged to demonstrate this situation to the Authorities within one month following the closing date of the market test. If so requested by the Authorities, TAP will provide an opinion by a third, independent party. In case such an Opinion is requested by the Authorities, the one month deadline is extended by two months. The Authorities will decide upon the economic viability of a pipe line expansion within one month after receipt of TAP AG's submission or receipt of the opinion from an independent third party,

as the case may be. TAP AG shall enter into a binding agreement to have the Expansion Capacity constructed no later than 2 month after the Authorities have deemed its construction economically viable. The expansion is economically viable if the incremental revenues from capacity resulting from each market test is equal or larger than the efficient incremental costs, quantified according to the TAP methodology as laid down in the TAP Tariff Code. To the extent that (in accordance with Article 4 of the present Decision) the TAP Tariff Code will remunerate TAP AG differently for Initial Capacity and Expansion Capacity, proper account will be taken in the TAP Tariff Code to ensure that the test for deciding whether construction of the Expansion Capacity is economically viable is unaffected.

9. *Possibility to further expand capacity* – Expansion beyond the Total Capacity, i.e. beyond 20 bcm/year, shall be investigated by TAP AG and if economically and technically feasible, it will be undertaken, with a view to fulfill all requests for long-term capacity (long-term means here a duration of more than 15 years).

10. *Obligation to offer short–term products* – For the whole duration of the exemption, TAP AG makes available to the market short term products (with a duration of up to one year) of a volume that, cumulatively, at least amounts to:

    - 5% of the Initial Capacity, and
    - 10% of the actually built Expansion Capacity;

    The capacity shall be offered by methods similar to those applicable to short-term products offered on non-exempted capacity.

4.2 Initial Capacity, forward flow: exemption from the requirements of Article 41.6, 41.8 and 41.10 of the Gas Directive (regulated tariffs)

This opinion is made with reference to the request at point 1b of §1.3.1.

An exemption from the provisions of Article 41.6, 41.8, 41.10 should be granted to TAP AG for a period of 25 years starting from the beginning of the Commercial Operation Date, under the following conditions:

1. At the latest three months after the present decision becomes effective, according to the provisions of the Directive 2009/73/EC, TAP AG will submit for the approval of the Authorities the final methodology for the implementation of the TAP Tariff. The TAP Tariff will reflect efficient costs, it will be transparent and non-discriminatory and will follow the principles described in the Exemption Application (*TAP Tariff Code*). The methodology will define the pricing mechanism for all forward capacity products offered by TAP, namely capacity products of different durations of firm and interruptible nature, for different entry and exit

points. The methodology will be such that for any further capacity product offered additional to the initial forward capacity, the TAP Tariff will be reduced. The Authorities in deciding on the final tariff structure, when approving the Tariff Code for TAP pipeline, will properly take into account and reflect them in the accepted tariff, the relevant different risk levels attached to TAP's investments in the Initial and Expansion Capacity. The Authorities shall monitor regularly if the TAP Tariff complies with the approved methodology. TAP shall cooperate with the Authorities in performing this task.

2. TAP AG will ensure that balancing services' charges, when applicable, will be objective, transparent, cost reflective and non-discriminatory and will be published.

4.3 Expansion Capacity forward flow: exemption from the requirements of Article 41.6, 41.8 and 41.10 of the Gas Directive (regulated tariffs)

This opinion is made with reference to the request at point 2a of §1.3.1.

An exemption from the provisions of Article 41.6, 41.8, 41.10 should be granted to TAP AG for a period of 25 years starting from the beginning of the Commercial Operation Date, with the following meaning and limitations:

1. capacity products will be offered through auctions, as a result of a Market Test, as described in point 7 of §4.1;
2. each product (different duration and/or entry or exit point) is priced separately;
3. for each product offered, the reserve price of the auction will be set equal to TAP Tariff, according to the TAP Tariff Code and the provisions of point 1 of §4.2;
4. users of the Expansion Capacity pay the price set in the item 3 above plus the premium resulting from the auction;
5. such premium will be allocated according to the provisions of point 10 of §4.7.

4.4 Reverse flow: exemption from the requirements of Article 41.6, 41.8 and 41.10 of the Gas Directive (regulated tariffs)

This opinion is made with reference to the request at point 3a of §1.3.1.

Following the analysis of §3.2.1 on the negative effect any exemption from the provisions of Article 41.6, 41.8, 41.10 of the Gas Directive on reverse flow might have on competition, the request for exemption for reverse flow products is rejected.

Reverse flow will be regulated, according to the provisions of the European legislation in place, with the following additional restrictions:

1. Reverse Flow capacity products will be offered through auctions in the Booking phase of the Market Test and in any subsequent market tests, as described in points 5 and 7 of §4.1;
2. the tariff for a reverse flow product cannot be higher than 5% of the tariff of an equivalent forward flow product. Tariffs for the reverse flow will be approved by the Authorities as part of the TAP Tariff Code referred to in point 1 of §4.3 and can be revised following the provisions of Article 41 of the Gas Directive and any secondary legislation that may result from the provisions of the Gas Regulation;
3. the reserve price of each reverse flow product in the auction, will be set equal to the applicable tariff of that product;
4. users of the reverse flow capacity pay the price set in item 3 above plus the premium resulting from the auction.
5. the revenues from such premiums paid by the reverse flow capacity users will be allocated according to the provisions of point 10 of §4.7;
6. TAP AG will ensure that at least 5 bcm/y capacity is provided for physical reverse flows for emergency operations;
7. TAP AG will ensure that at least 5 bcm/y capacity is provided for reverse flows for commercial operations.

4.5 Exemption from requirement of Article 9 of the Gas Directive (Unbundling)

This opinion is made with reference to the request at point 3b of §1.3.1.

An exemption from the provisions of Article 9.1 of the Gas Directive is granted to TAP AG for a period of 25 years starting from the Commercial Operation Date and subject to the following conditions:

1. TAP AG, prior to allocating capacity as a result of the first Booking Phase has to implement functional unbundling. To this end, TAP AG shall establish and submit to the Authorities for their approval, a Compliance Programme, which sets out measures taken to ensure that discriminatory conduct is excluded and that, no commercially sensitive information is communicated to its shareholders. The Compliance Programme should be submitted to the Authorities not later than 6 months after the adoption of the Commission Decision. The Compliance Officer should be appointed not later than 1 month from the approval of the Compliance Programme by the Authorities. This Compliance Programme shall lay down at least the following:

(i) Measures to prevent discriminatory conduct in relation to the participants in the first Booking Phase of the market test, who are not shareholders in TAP AG.

(ii) The duties and the rights of the employees of TAP AG in the fulfilment of the purposes of the Compliance Programme.

(iii) The person or body responsible for monitoring the Compliance Programme and submitting to the Authorities an Annual Compliance Report, setting out the measures taken.

(iv) The principles of the tariff methodology and the congestion management rules that were to be applied to the marketing of capacity by TAP AG

2. TAP AG should be required to be fully certified before the start of the construction of the pipeline, and not later than 1 January 2018. To this end, TAP AG will apply for certification in accordance with Article 10 or 11 of the Gas Directive, as the case may be, with the view to safeguard the degree of independence of the top and executive management of TAP AG from its shareholders. Therefore TAP AG will need to be certified in each Member State, which territory it crosses. Regulatory Authorities of Greece and Italy will need to assess in their certification decisions the compliance of TAP AG with the unbundling rules prescribed in the Exemption Decision. To this end, the certification application will be based on an independent transmission operator model. TAP should comply with all conditions set out in Chapter IV of the Gas Directive apart from Article 22 of the Gas Directive. These conditions should include, among others as specified in Chapter IV of the Gas Directive, the following provisions:

(i) The top and executive management of TAP AG will not participate in any company structures of the shareholders of TAP AG responsible for the day-to-day production and supply of gas.

(ii) Evidence that the professional interests of persons responsible for the management of TAP AG are taken into account in a manner that ensures that they are capable of acting independently.

(iii) All the financial supervision rights allowed under legal and functional unbundling shall be charged to a Supervisory Body. The Supervisory Body shall be in charge of taking decisions that may have a significant impact on the value of the assets of the shareholders within TAP AG. This includes the decisions regarding the approval of the annual and longer-term financial plans, the level of indebtedness of TAP AG and the amount of dividends distributed to shareholders. However, the Supervisory Body cannot interfere with the day-to-day activities of TAP AG and the operation of TAP pipeline.

(iv) Evidence that TAP AG has the necessary resources, including human, technical, physical and financial to have effective decision-making rights.

(v) Evidence that TAP AG will have a Compliance Programme in place, which is adequately monitored by a compliance officer employed by TAP AG.

3. TAP AG is not compelled to comply with Article 22 of the Gas Directive, since the scope of the provisions of Article 22 of the Gas Directive are sufficiently addressed by the in-depth assessment of the Authorities and by the conditions and time limits which are imposed by this Joint Opinion.

4.6 Exemption from the provisions of Gas Regulation (with exception of Article 19.4)

This opinion is made with reference to the request at point 3c of §1.3.1.

According to the provisions of Article 30 of the Gas Regulation, it would be possible to grant the requested exemption to fully exempted infrastructure. As TAP is not fully exempted, the Authorities believe that an exemption from all the provisions of the Gas Regulation is not justified, since this might have a negative impact on the transparency of access to the pipeline, as well as on the operation of the regulated systems to which TAP will be connected. On the other hand, the implementation of some of the provisions of the Gas Regulation and the rules to be put in force following such provisions might have a negative impact on the implementation of the present decision. To this end, TAP AG will have to comply with the provisions of Gas Regulation, as long as they are not in conflict with the provisions of the exemption decision, in the way described under point 1 of §4.7

4.7 Additional Terms to safeguard full compliance to the criteria of Article 36.1

1. *Obligation to issue the Network Code* – No later than 12 months prior to its Commercial Operation Date, TAP AG will submit for approval to the Authorities a *TAP Network Code*. The Network Code shall be compatible with all provisions of Regulation 715/2009 and of the European Network Codes of Article 8.6 of Regulation 715/2009 that are not in conflict with the terms of the present decision. To this end, once each European Network Code becomes binding or it is modified, TAP AG will submit to the Authorities for their approval, a revision of TAP Network Code, which will incorporate those provisions of such European Network Code that are not in conflict with the present decision. The TAP Network Code will be published on the TAP AG website.

   The TAP Network Code will be published on the TAP AG website, and should, at least, include the following:

   - Detailed procedures for normal operations, including nomination of capacity at all entry and exit points of TAP, for forward and reverse flow;
   - All procedures necessary for the secondary trading, including a so-called "electronic-bulletin board", which will be available to all shippers;

- Congestion Management Procedures and use-it-or-lose-it arrangements;
- Procedures for the publication of data regarding the operation and the availability of capacity to all users of the pipeline;
- A declaration by TAP AG that sanctioned gas[2] will not be imported or transported through any part of the TAP project.

2. *Pro-competitive measures for the Italian market* – In view of the current gas market structure in Italy (described in §2.2.1.3), it is fundamental not to hamper the positive effects on competition expected from the investment in case an undertaking with significant market power were to reserve TAP import capacity on a long term basis either subletting TAP exempted capacity or booking the available capacity through auctions. Against such risks, the Italian legislation provides for a legal mechanism ensuring an ex-ante check in case of changes in relevant rights. Namely, in case of transfer of exempted capacity to third parties, the Decree of Ministero delle attività produttive of April 11th, 2006[3] obliges the importers to obtain the Ministry's prior authorization. Additionally, a relevant request for confirmation of the granted exemption is to be addressed to the Ministry in case of variations of the conditions on which the exemption decision is based, including, inter alia, any change of the identity of the exemption's beneficiaries[4]. The above mentioned authorization shall be granted only if changes in relevant rights do not negatively affect competition and the functioning of the Italian gas market.

3. *Capacity caps for dominant players in Italy* – For the prevention of the development of a dominant market positions or the reinforcement of existing dominant positions in the Italian gas market, without prejudice of requirements established by Article 2 of the Italian decree dated March 13th 2013, the following conditions shall also apply:

   (i) Any undertaking with a share of 40% or larger in any relevant product market for the supply of gas in Italy, or on the upstream market of supplying gas for Italy, shall not be allowed to reserve more than 50% of the capacity on the TAP exit point in Italy.

   (ii) In the event that two or more undertakings together hold a market share of at least 80% and each of these undertakings have a market share of more than 20% in any relevant product market for the supply of gas in Italy, or on the upstream market of supplying gas for Italy, AEEG will have the right to impose a capacity cap on these undertakings on the TAP exit point in Italy.

   (iii) Where, due to lack of interest by other parties, the capacity caps in (i) and (ii) above prevent the expansion of the pipeline or causes existing capacity

[2]Sanctioned Gas is natural gas whose import prohibition is defined by Article 9 of the COUNCIL REGULATION (EU) No 1263/2012 of 21 December 2012 amending Regulation (EU) No 267/2012 concerning restrictive measures against Iran.

[3]See article 8 of the Ministry Decree

[4]See Article 7 of the Ministry Decree

to remain idle, a derogation from the capacity caps of (i) and (ii) shall apply on the condition that the undertaking(s) concerned offer to the market the entire volume of gas in excess of the capacity that the undertaking(s) hold in an open, transparent and non-discriminatory procedure. The gas volume release shall be followed by a corresponding capacity release. The gas volume release and the capacity release will be subject to a procedure approved by AEEG.

(iv) For the calculation of the market share and the percentage of the capacity cap, undertakings belonging to the same group of companies shall be considered together. The market share shall be calculated as the average of the last two consecutive years.

(v) Only in case the imposition of the gas and capacity release will give rise to a situation where the undertaking(s) concerned has/ve no incentives to utilise the capacity above the capacity cap imposed, on request of the undertaking concerned or on its own initiative, AEEG can provide a temporary derogation to provide for the gas and capacity release. Such derogation shall be subject to other conditions that maintain the competition enhancing effects of the investment for competition. Such a derogation is given by the Regulatory authority, after consulting the National Competition authority.

4. *Connection with Greek system* – Following cooperation with DESFA, TAP AG will implement and put in operation from the commercial operation date of TAP, one or more connection with the existing Greek National Transmission System (ESFA), owned and operated by DESFA, other than the Entry Point of TAP. These new connection point(s) will have technical capability for bidirectional flow and a capacity of not less than 10 mcm/day for each connection point in both directions. All costs related to the expansion and/or construction and operation of these connection point(s) to the ESFA will be entirely borne by DESFA and incorporated into the tariffs of ESFA, as defined in the relevant Greek legislation. In defining the final capacity of such interconnections, as well as their exact location, TAP AG and DESFA may perform a relevant market test, following the approval of RAE. For the avoidance of doubt, the availability of such connection capacity is not linked to the available capacity of TAP, nor does it imply an obligation of TAP to build additional capacity other than the one resulting from §4.1 above. In addition, costs related to such connection points will not include the investments required for additional capacity resulting from §4.1, which, in any case, will be remunerated through TAP Tariffs.

5. *Obligation to build additional entry and exit points in Greece* – TAP AG will have the obligation, upon request of a third party, as a result of any market test, to construct additional entry and exit points in the territory of Greece, as long as such construction is technically feasible. TAP AG shall enter into a binding agreement to have the additional entry and exit points in Greece constructed no later than

2 month following the closing date of the market test. The burden of proof to demonstrate that the construction of such additional entry and exit point is not technically feasible rests with TAP AG. If so requested by the Authorities, TAP AG is to provide an Opinion from an independent third party. If TAP AG seeks to demonstrate that the construction of additional entry and exit points is not technically feasible, TAP AG will do so within one month after the closing of the market test, a period that can be extended with an additional two months if the Authorities request an opinion from an independent third party. The Authorities will decide upon TAP AG's request within one month after TAP AG's request or the receipt of the opinion from an independent third party, as the case may be. TAP AG will enter into a binding agreement for the construction of the additional entry and exist points no later than 2 months after the Authorities deem their construction technically feasible. All costs related to the construction and operation of such entry and exit points will be borne by the third party who made the request, according to the national legislation in place at the time of the request. Costs related to such entry and exit points will not include the investments required for additional capacity of TAP, resulting from §4.1, which will be remunerated through TAP Tariffs.

6. *Capacity caps for dominant players in Greece* – For the prevention of the development of a dominant market position or the reinforcement of existing dominant positions in the Greek gas market, the following conditions shall apply:

   (i) any undertaking with a share of 40% or larger in any relevant product market for the supply of gas in Greece, or on the upstream market of supplying gas for Greece, shall not be allowed to reserve more than 50% of the capacity on any of the TAP exit points referred to in points 4 and 5 above;

   (ii) in the event that two or more undertakings together hold a market share of at least 80% and each of these undertakings have a market share of more than 20% in any relevant product market for the supply of gas in Greece, or on the upstream market of supplying gas for Greece, RAE will have the right to impose a capacity cap on these undertakings on any of the TAP exit points referred to in points 4 and 5 above;

   (iii) TAP AG will inform RAE immediately of the results of the market test of point 4 above, or for the request of the third party of point 5 above, so that RAE can express its preliminary or final opposition, according to the points (i) and (ii) above;

   (iv) where, due to lack of interest by other parties, the capacity caps in (i) and (ii) above prevent the expansion of the pipeline or causes existing capacity to remain idle, a derogation from the capacity caps of (i) and (ii) shall apply on the condition that the undertaking(s) concerned offer the entire volume of gas in excess of the capacity that the undertaking(s) hold in excess in an open, transparent and non-discriminatory procedure. The gas volume release shall

be followed by a corresponding capacity release. The gas volume release and the capacity release will be subject to a procedure to be approved by RAE;

(v) for the calculation of the market share and the percentage of the capacity cap, undertakings belonging to the same group of companies shall be considered together. The market share will be calculated as the average of the last two consecutive years. In case of the construction of new exit points referred to in points 3 and 4 above, due account shall be given to the prospective effects thereof on the market share of the undertakings concerned;

(vi) only in case the imposition of the gas and capacity release will give rise to a situation where the undertaking(s) concerned has/ve no incentives to utilise the capacity above the capacity cap imposed, on request of the undertaking concerned or on its own initiative, RAE can provide a temporary derogation to provide for the gas and capacity release. Such derogation shall be subject to other conditions that maintain the competition enhancing effects of the investment for competition. Such a derogation is given by the Regulatory authority, after consulting the National Competition authority.

7. *Obligation to build exit points in Albania* – Following co-operation with the Albanian Authorities, TAP AG will construct and operate from its commercial operation date, at least one exit point in the territory of Albania, near the city of Fier or as otherwise agreed with the Albanian Authorities, with a minimum technical capacity of 2 mcm/day, bidirectional and expandable to a maximum of 10 mcm/day.

   TAP AG shall enter into a binding agreement to have the additional entry and exit points in Albania constructed no later than 2 months following the closing date of the market test. The burden of proof to demonstrate that the construction of such additional exit point is not technically feasible rests with TAP AG. If so requested by the Authorities, TAP AG is to provide an Opinion from an independent third party. If TAP AG seeks to demonstrate that the construction of additional entry and exit points is not technically feasible, TAP AG will do so within one month after the closing of the market test, a period that can be extended with additional two months if the Authorities request an opinion from an independent third party. The Authorities will decide upon TAP AG's request within one month after TAP AG's request or the receipt of the opinion from an independent third party, as the case may be. TAP AG will enter into a binding agreement for the construction of the additional entry and exit points no later than two months after the Authorities deem their construction technically feasible.

   All costs related to the construction and operation of this connection will be borne by an entity indicated by the Albanian Authorities. For the avoidance of doubt, the availability of such connection capacity is not linked to the available capacity of TAP, nor does it imply an obligation of TAP to build additional capacity other than the one resulting from §4.1 above. In addition, costs related to such connection

points will not include the investments required for additional capacity resulting from §4.1, which, in any case, will be remunerated through TAP Tariffs.

8. *Obligation to expand existing and/or build additional entry and exit points in Albania* – TAP AG will have the obligation, upon request of a third party, as a result of any market test, to expand existing and/or construct additional entry and exit points in the territory of Albania, as long as such construction is technically feasible. All costs related to the construction and operation of such entry and exit points will be borne by the third party who made the request, according to the national legislation in place at the time of the request. Costs related to such entry and exit points will not include the investments required for additional capacity of TAP, resulting from §4.1, which will be remunerated through TAP Tariffs.

9. *Capacity caps for dominant players in Albania* – For the prevention of the development of a dominant market position in the Albanian gas market, the following conditions shall apply:

   (i) No gas supplier may hold more than 80% of the transportation capacity of the TAP exit points in Albania referred to in points 7 and 8 above, for the initial 10 years from the date when such exit points of TAP in Albania are put in operation. Following this initial period of 10 years, ERE (or the corresponding national authorities according to the national legislation) will decide on how this maximum percentage will decrease.

   (ii) TAP AG will inform ERE in good time of any request of a third party, as referred to in points 7 and 8 above, so that ERE can express its preliminary or final opposition, according to the point (i) above.

   (iii) Where due to lack of interest by other parties, the capacity cap in point (i) above prevent the expansion of the pipeline or causes existing capacity to remain idle, a derogation from the capacity cap of (i) apply on the condition that the undertaking(s) concerned shall offer the volume of gas relating to the capacity it/they hold in excess of the cap to the market in an open, transparent and non-discriminatory procedure. The gas volume release shall be followed by a corresponding capacity release following a procedure to be approved by ERE.

   (iv) For the calculation of the market share and the percentage of the capacity cap, undertakings belonging to the same group of companies shall be considered together.

   (v) Shippers on the TAP pipeline shall not sell more than 50% of the total amount of gas supplied through the exit point(s) in Albania to one undertaking buying gas for the markets in Albania, for the first five years after the start of operations of an exit point in Albania. For the calculation of this cap, undertakings under the control of the same entity shall be considered together. Where there is no sufficient interest by other buyers for gas volumes exceeding

this cap, a derogation from the gas volume cap shall apply on condition that the undertaking concerned has offered the volume of gas in excess of the 50% cap to the Albanian markets in an open, transparent and non-discriminatory procedure which is subject to the approval of the regulatory authority. After the expiry of the five years, ERE may design and impose a gas release program on dominant companies to the extent needed to establish or protect competition.

10. *Auctions revenues* – Any extra revenue beyond the reserve price, from the auction procedures as for §4.3 and §4.4 is transferred by TAP AG to a special fund which will be at the disposal of Authorities to be redistributed to final customers. The procedures of such mechanism will be defined by Authorities by the date of TAP AG commercial operation.

11. *Changing in TAP shareholding* – If, directly or indirectly, an undertaking acquires joint or sole control over or merges with TAP AG or one of its shareholders, TAP AG must notify this change to each of the relevant national authorities concerned which must then assess (if deemed necessary in cooperation with a national competition authority) whether the conditions under which the exemption was granted are still met.

    The provision will be applied in accordance with Article 3 of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) and the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (2008/C 95/01)

4.8 Governance

1. *Regulatory Cooperation* – Where the present opinion foresees an action by the Authorities, for the purpose of the implementation of such an action, the Authorities shall endeavor all efforts to act jointly.

2. *Dispute settlement* – Within 6 (six) months prior to the Commercial Operation Date of the TAP pipeline, the Authorities shall issue a joint decision on the settlement of disputes in relation to this joint decision which may arise during the operation of TAP.

4.9 Violation of the provisions of the present decision

1. Any infringement by TAP AG of the conditions set in the present joint exemption opinion, may result in a penalty imposed on TAP AG by the Authorities to be determined in accordance to national law and procedures.

2. Serious violation by TAP AG of the conditions set in the present Joint Opinion may result in withdrawal by the authorities of the exemptions provided by this Joint Opinion

4.10 Commercial Operation Date and Effect of the Joint Opinion

1. *Commercial Date of Operation* – TAP shall be put into operation no later than 1 January 2019.

2. *Effect of the present exemption* – In line with the provisions of Article 36(9) of Directive 2009/73/EC, the present Opinion and the Commission's approval shall lose its effect 3 years from its adoption in the event that construction of TAP has not yet started, and 6 years from its adoption in the event that the infrastructure has not become operational, unless the Commission decides that any further delay is due to major obstacles beyond control of the person to whom the exemption has been granted.

Appendices

Appendix A

TAP AG Cost and Risk Analysis

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