



DECISION

No.135, of date 24.12.2014

ON

**REVIEWING AND APPROVING “ENERGY REGULATOR’S JOINT
OPINION ON TAP AG-s REQUEST FOR A PROLONGATION OF THE
VALIDITY PERIOD OF THE EXEMPTION DECISION”**

ERE-s Board of Commissioners, on its meeting of date 24.12.2014,

Implementing:

- Directive 2009/73/EC of the European Parliament and the Council of date July 13 2009 (hereinafter: Directive 73/09);
- Regulation 713/2009/CE of the European Parliament and Council of date July 13 2009
- Regulation 715/2009/CE of the European Parliament and Council of date July 13 2009 (hereinafter Regulation 715/09);
- Law no. 9946, of date 30.06.2008. “For natural gas sector”, as amended;
- Decision No 27, date 01.03.2013, of ERE-s Board of Commissioners, “For approving the bidding exemption of TAP – AG company from the requirements of articles 9, 32 and 41 (6), (8) and (10) of 2009/73/EC Directive for Trans Adriatic Pipeline” project;
- Decision No.12, of date 14.02.2014 “On Reviewing and Approving the Regulatory Compliance Program’ submitted by TAP AG based on Final Joint Opinion within the exemption procedure for TAP pipeline”.
- Decision No. 16 of date 13.03.2014 “On Approving the Guideline for Managing the Capacities in Trans Adriatic Pipeline project (for the First Booking Phase) according to the ‘Final Joint Opinion’ within the exemption procedure for TAP pipeline”
- Decision No.17, of date 13.03.2014, “On Reviewing and Approving the Booking Phase Notice” submitted by TAP AG for allocating the capacities procedure for TAP pipeline in conformity with the guideline approved with decision no.16, date 13.03.2014.
- TAP AG request, for the exemption of TAP Pipeline of date September. 2. 2011 (hereinafter the letter of date September. 2. 2011)

- European Commission Decision C (2013) of date May 16 2013, *“Exemption of Trans Adriatic Pipeline from the requirements on third party access, tariff regulation and ownership unbundling laid down in Articles 9, 32, 41(6), 41(8) and 41(10) of Directive 2009/73/EC” (as follows European Commission Decision of date May 16 2013), ;*
- Energy Community Secretariat Opinion (no 1/2013) of date May 14 2013;
- Decision no. 64, date 13.06.2013, of ERE-s Board of Commissioners “For amending ERE-s Board of Commissioners Decision no. 27 of date 1.03.2013 “ For approving the binding exemption of TAP-AG company from the requirements of articles 9, 32, and 41 (6), 8 and (10) of 2009/73/EC Directive for Trans Adriatic Pipeline Project, to take into consideration the Opinion of Energy Community Secretariat (no 1/2013) and European Commission Decision (C(2013)2949” by approving the document “Final Joint Opinion of the Energy Regulators on TAP AG's Exemption Application Autorita per l'Energia Elettrica e il Gas (Italy), Enti Rregullator i Energjise (Albania) and Regulatory Authority of Greece (Greece)” hereinafter Final Joint Opinion;
- TAP AG Request on February 5 2014 (protocol no. 56/1 of date 08.02.2014), on approving the final draft of “ Regulatory Compliance Programme” submitted before on November 15 2013 (Protocol no 500/19). The same request is submitted on the same time and form from the the Regulatory Authorities of Italy (AEEG) and Greece (RAE)
- Decision No. 127 of date 07.11.2013 “On approving the TAP Tariff Code, proposed by TAP AG, according to the obligations defined in “Final Joint Opinion” within the procedure of exempting TAP pipeline”;
- TAP AG request of date January 8 protocolled by ERE Prot. No. 56, on 14.01.2014;
- The attached letter from the trading company TAP AG prot.no 329/25 of date 17.12.2014

Considering that:

- TAP AG company in accordance with Law no. 9946, of date 30.06.2008 "On Natural Gas Sector" has submitted to ERE the request for exemption in respect of an interconnector project crossing Greece, and Albania to continue in Italy (hereinafter TAP pipeline); as such for the purposes of the exemption it is necessary the inclusion of the regulatory authorities (hereinafter the Authorities) of Greece Energy Regulatory Agency (hereinafter RAE) and Italian Authority for Electricity Gas and Water (hereinafter AEEG);
- Paragraph 4.10.2 of the Final Joint Opinion, provides in consistency with Article 36, paragraph 9 of Directive 73/09 that the exemption decision shall lose its effect after three years from its adoption on (June 6, 2016) if after the expiry of this deadline the construction has not yet started and 6 years in the event that the infrastructure has not become operational, unless the Commission decides that the delay is due to major obstacles beyond the control of the company to which the exemption is granted;

- The deadlines provided took into consideration the status of the project at the adoption moment of the Final Joint Opinion as well as the best estimates possible of that time in accordance with the date provided for the operation of the pipeline expected, to whom nor Shah Deniz consortium (hereinafter SD consortium) or TAP AG has not taken yet the final decision for investment:
- After taking the final decision to invest in the project in question, (December 14 2013), SD Consortium announced TAP-AG that the first window provided by Funnelling Mechanism will last from 1 January 2020 until 31 December 2022;
- For what is mentioned above, TAP AG with the letter of date June 27 2014 has officially asked the authorities to extend the validity period of the exclusion decision, and therefore determine respectively the dates of January 1 2020 and December 31 2022 , the time within which the pipeline must be built and operational.
- Later, in the letter of December 17 2014 TAP AG informed the Authorities that based on recent notification received from SD Consortium of date (December 16) the second window provided by funneling mechanism for gas distribution will last from 1 January 2020 until on December 31, 2020;
- The conditions proposed will enable the coordination of the assuming date for the entry into operation of the pipeline with the basic gas contracts seen that from the information given by the SD Consortium is not possible the first gas delivery before January 2020;
- In support of its request for deadlines prolongation, TAP AG, with the letters of March 14 2014, November 11 2014, November 26 2014 and 17 December 2014, explained that:
 - The current contractual commitments of SD Consortium do not allow gas distribution in Europe before January 1 2020 or beyond December 31 2020;
 - These contractual mechanisms are imposed on the TAP AG from SD Consortium therefore TAP AG has no power to influence on the decisions regarding the date of gas delivery;
 - Furthermore, the mismatch of the validity period for the exemption decision and the duration of gas contracts (which is defined even by the funnelling Mechanism) can lead TAP AG and transporters to a considerable financial and trade risk because such a mismatch will create uncertainty on:
 - i. the available capacity of transporters by the end of the exemption period, resulting in the latter's inability to meet obligations and to buy gas as provided by signing long-term contracts; and
 - ii. TAP AG possibility to return the investment in the pipeline within 25 years, an assumption on which TAP AG shareholders have based their decision to invest in the project in question;
 - Funnelling Mechanism is designed to provide the necessary flexibility to coordinate the date of pipeline operation with various investments present throughout the project; so that no investment will be performed earlier or later overloading as such the financial burden or unnecessary risks at the expense of investors.
 - The Funnelling Mechanism does not refer to the date that the pipeline is in operation according to the principle *sine die* but, in contrast, sets a deadline by which gas is sent to

users (ie, not later than December 31 2020 on the basis of the latest information taken on the official letter of date December 17 2014);

- In conclusion, the coordination between the validity period of the exemption decision and the time that funelling Mechanism will enable transporters to provide input capacity in Italian transport system during the entire duration of the base contracts for the gas supply.

Considering that:

- In accordance with the provisions of Article 36, Directive 73/09, the application of TAP AG to prolong the validity period of the exemption decision was motivated by circumstances that were unknown at the time of the Final Joint Opinion approval and beyond the direct control of the applying company;
- The deadlines associated with various investments in the entire supply chain of the project in question have influenced in the date of pipeline operation;
- The decision to use funneling mechanism to determine the date of pipeline operation in relation with the first gas deliveries to Europe seems to be appropriate to allow the necessary coordination between the various investments needed to construct complex infrastructures such as the project in question;
- On the other hand, the choice of a specific possible date (which among other things is identified before realizing the project), within which the pipeline must be operational, seems less appropriate in this case, because the total lack of flexibility can cause major financial risks and inefficiencies in the expense of those who invest throughout the project;
- The possible prolongation of the exclusion decision deadline, requested by TAP AG should not cause a delay in the operation of the pipeline - being that from the information received, it results that now are undertaken obligations between the purchasers and the transporters, so there will be no more reasons to prolong the date for gas distribution;
- Taking into account the above arguments, we deem reasonable the positive attitude regarding TAP AG request to extent the validity period of the Exemption Decision.

For all the above mentioned, the Board of Commissioners

Decided:

1. To approve the "Energy Regulator's Joint Opinion on TAP's request for a prolongation of the validity period of the Exemption Decision" attached to this decision.
2. To inform the Energy Community Secretariat, Ministry of Energy and Industry, Energy Regulatory Authorities of Italy (AEEG) and Greece (RAE) and TAP, for taking this Decision.
3. This decision enters into force immediately and is published in the Official Gazette.



REPUBLIC OF ALBANIA
ENERGY REGULATOR AUTHORITY
Board of Commissioners



ERE-s Board of Commissioners Vote for,

DECISION

No.135 , of date 24.12.2014

ON

REVIEWING AND APPROVING “ENERGY REGULATOR’S
JOINT OPINION ON TAP AG-s REQUEST FOR A
PROLONGATION OF THE VALIDITY PERIOD OF THE
EXEMPTION DECISION”

Board Members

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