



ENERGY REGULATOR AUTHORITY

DECISION

No.104, Dated 29.06.2020

ON

APPROVING THE ‘ELECTRICITY REGULATOR’S JOINT OPINION ON THE REQUEST OF TAP AG TO PROLONG THE VALIDITY TERM OF THE EXEMPTION DECISION’, FROM THE PROVISIONS OF ARTICLES 9, 32, 41(6), (8) AND (10) DIRECTIVE 2009/73/EC”.

Based on article 16, of Law no. 43/2015 “*On Power Sector*”, as amended; articles 44 and 49 of Law no.102/2015 “*On Natural Gas Sector*”, as amended; the Board of Energy Regulator Authority (ERE), on their meeting dated 29/06/2020,

Implementing:

- Directive 2009/73/EC of the European Parliament and of the Council dated 13 July 2009 (herein below: Directive 73/09);
- The regulation 713/2009/CE of the European Parliament and of the Council dated 13 July 2009;
- The Regulation 715/2009/CE of the European Parliament and of the Council dated 13 July 2009 (as follows Regulation 715/09);
- ERE Board Decision no. 27, dated 01.03.2013, “On approving the conditional exemption of TAP AG from the requirements of articles 9, 32, 41 (6), (8), (10) Directive 2009/73/EC for Trans Adriatic Pipeline project”;
- ERE Board Decision no. 64, dated 13.06.2013, “On amending ERE Board Decision, no. 27 dated 1.03.2013 “On approving the conditional exemption of TAP-AG company from the requirements of Articles 9, 32 and 41(6), (8) and (10) Directive 2009/73/EC
- ERE Board Decision, no.135, dated 24.12.2014 on the ”Energy Regulators Joint Opinion on TAP AG request to prolong the validity period of the exemption decision.
- The request dated 15 June 2020, that TAP AG submitted to the three regulators of Albania (ERE) Italy (ARERA), Greece (RAE), to prolong the exemption;

- European Council Decision C(2013) 2949 dated 16.05.2013 on the exemption of Trans Adriatic Pipeline from the requirements of third party access, tariff regulation and ownership unbundling defined on Articles 9, 32, 41(6), 41(8) and 41(10) Directive 2009/73/EC.
- European Council Decision C(2015) 1852, dated 17.03.2015 to postpone the exemption of Trans Adriatic Pipeline on some requirements of third party access, tariff regulation and ownership unbundling defined on Articles 9, 32, 41(6), (8), and (10) Directive 2009/73/EC;
- Opinion 1/2015 of Energy Community Secretariat (EnC) dated 17 March 2015, on the prolongation of Trans Adriatic Pipeline interconnector exemption on some requirements according to Directive 2009/73/EC from Energy Regulator Authority (ERE);
- ERE Board Decision no. 127 dated 07.11.2013 “On approving the tariff methodology (TAP Tariff Code), proposed by TAP AG, according to the obligations defined on the “Final Joint Opinion” in the framework of TAP pipeline procedure”;
- I-185503/01.07.2014 and I-190427/27.11.2014 TAP AG Company documents which were submitted for approval by the Albanian, Greek and Italian Regulatory Authorities, the request to prolong the exemption;
- The Joint Regulators Opinion, on the request of TAP AG deals with the exemption of the validity period of the exemption decision dated 17.03.2015, paragraph 4 which amends paragraph 4.10 of the Final Joint Opinion (FJO);
- Paragraph 4.10.2 of the Final Joint Opinion defines that in conformity with Article 36 (9) of the Gas Directive, the Exemption shall lose its effects 3 years from the approval when the construction of TAP has not yet started and 6 years from the approval where 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.

Considering that:

- On August 2011, TAP AG submitted the request for the exemption from the implementation of the provisions of articles 9,32 and 41(6) and (10) Directive 2009/73/EC and in conformity with the provisions of article 36 of the three authorities of Albania, Greece and Italy.
- On June 2013, the Albanian, Greek and Italian Authorities, granted to TAP AG supporting on Article 36 Directive 2009/73/EC, the exemption from the implementation of articles 9,32 and 41(6), (8) and (10) of this Directive for the Trans Adriatic Pipeline (TAP) for a 25 years period from the operation of the pipeline. Based on these decisions, the three authorities approved a joint document “Final Joint Opinion” of the Energy Regulators on TAP AG exemption application;
- Part 4 of the Authorities Joint Opinion”, defines a special regulatory framework for the management and operation of TAP AG pipeline for the certification issues, the tariff regulation

- as well as the usage of the pipeline and third party access at the infrastructure;
- In conformity with Article 11 of the European Council Decision paragraph 4.10 (2) of the exemption decision, Paragraph 9 of Article 36 of the Directive, it results that the exemption shall cease its validity after the termination of three (3) years from their approval if the construction of the pipeline has not started and after six (6) years from their approval, if the pipeline has not started the operation period;
 - The postponement of the exemption may be granted only when the European Commission approved its decision on the exemption of Greece and Italy and after taking the opinion for ERE from EnC.
 - The construction of the pipeline initiated on time and concretely on May 16 2016;
 - On 27.06.2014, TAP AG company required to postpone the exemption from the provisions of articles 9, 32, and 41(6), (8) and (10) Directive 2009/73/EC, for the reasons that are beyond its control that means a delay at the availability of gas upstream flow from Shah Deniz Consortium Azerbaijan and consequently with the start of TAP pipeline operation;
 - The competent authorities issued the decision to postpone the date when the ‘TAP infrastructure becomes operational’ (that means commercial operation date), is required a modification from the competent Authorities of the joint opinion on the exemption, according to the same procedure and to issue from competent Authorities of the Initial Joint Final Decision on the exemption, including the inclusion of European Commission and of Energy Community Secretariat;
 - TAP AG issues the following reasons for the request of the postponement of the date when ‘the infrastructure is set into operation’ (that means commercial operation date):
 - a. Permitting related obstacles in Italy. The competent Italian authority imposed 65 conditions, which were assessed and approved by a considerable number of local and regional authorities. Moreover, the prevention of the TAP project construction between June 1 and September 30 of each year as well as the autonomous administrative procedures for the removal/storage of the olive trees, delayed the construction time schedule of the project for one year;
 - b. Severe security breaches in Italy.
 - c. The need to continuously implement series of measures for the security of the construction sites in Italy and the employees that work there, adding the opposition of the local and regional organizations that often manifested via violent protests;
 - d. Different legal and judicial procedures, including a seizure order that caused a delay for 8 months;
 - e. The pandemic caused by the COVID-19 virus, which inevitably delayed the works for a long time and caused problems and delays in the transportation of materials and the employees;

- TAP AG requested to prolong the date by when its ‘infrastructure becomes operational’ (i.e. commercial operations date) with one year, until on 31 December 2021, due to the justifications listed above, including the uncertainty created by the possibility of a new wave of pandemic caused by the COVID-19 virus;
- The Regulatory Authorities of Albania, Greece and Italy, in close cooperation between them, decided that the procedure described above shall be followed again;
- The Regulatory Authorities of Albania, Greece and Italy, closely cooperated to examine and access the TAP AG company request and set in favor of the stability the required arguments and the fulfillment of the conditions defined on article 36 (9) Directive 2009/73/EU, confirming the claim of the company that the possible delays at the termination of the pipeline construction and commencement of the commercial operations are beyond TAP AG company control.

For all of the above mentioned, ERE Board

Decided

1. To approve the ‘Energy Regulators Joint Opinion on TAP AG request for the prolongation of the validity period of the Exemption Decision’, for the prolongation of the validity period of the exemption decision attached to this decision as ‘Annex A’ and is an integral part of it.
2. Shall propose to amend paragraph 4.10 of the ‘Authorities Joint Opinion, in conformity with point 2 of the Annex.
3. Shall inform the Energy Community Secretariat, the Ministry of Infrastructure and Energy, the Regulatory Authorities of Italy (AEEG) and Greece (RAE) and TAP AG, for this Decision in conformity with paragraph 3 Article 36 of the Directive.

This decision enters immediately into force.

This decision may be required to be reviewed by ERE within 7 calendar days and may be complained on Tirana Administrative Court, within 45 calendar days from the publication in the Official Gazette. This Decision is published on the Official Gazette.

ERE CHAIRMAN
Petrit AHMETI