



REPUBLIKA E SHQIPËRIË

## ENERGY REGULATOR AUTHORITY

### BOARD

### DECISION

No. 149, dated 10.09.2020

#### ON

### APPROVING THE “REGULATORY COMPLIANCE PROGRAM” SUBMITTED BY TAP AG ACCORDING TO THE “FINAL JOINT OPINION” WITHIN THE EXEMPTION PROCEDURE FOR TAP PIPELINE.

Based on article 16, of Law no. 43/2015 “*On Power Sector*”, as amended, articles 13; 15, 16 and article 108, of Law no. 102/2015 “*On Natural Gas Sector*” as amended, as well as article 15 of the “*Regulation for ERE organization, operation and procedures*”, approved with ERE Board Decision No. 96, dated 17.06.2016, ERE Board, on their meeting dated 10.09.2020, after reviewing the report prepared by Natural Gas Directory, on approving the “Regulatory Compliance Program”, submitted by TAP AG,

#### Observed that:

#### ERE Board, on their meeting dated 14.02.2014, implementing:

- Directive 2009/73/EC of the European Parliament and of the Council dated 13 July 2009 (herein below: Directive 73/09).
- Regulation 713/2009/CE of the European Parliament and of the Council dated 13 July 2009, which establishes the agency for cooperation between energy regulators.
- Regulation 715/2009/CE of the European Parliament and of the Council dated 13 July 2009, regarding the conditions to enter into the transport networks of natural gas which, abrogates the Regulation 1775/2002 CE.
- Law no.102/2015, dated 23.09.2015. “On Natural Gas Sector”, as amended.
- ERE Board Decision No 27, dated 01.03.2013, “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 Trans Adriatic Pipeline project”.
- European Commission Decision C (2013) 2949, dated 16 May 2013, on “Exemption of Trans Adriatic Pipeline from the requirements on third party access, tariff regulation and ownership unbundling laid down in Articles 9, 32, 41(6), 41(8) and 41(10) of Directive 2009/73/EC”.
- Energy Community Secretariat Opinion (No 1/2013), dated 14 May 2013;
- ERE Board Decision no.64, dated 13.06.2013, “On amending ERE Board Decision, no, 27 dated 01.03.2013 “On approving the conditional exemption of TAP-AG company from the

requirements of articles 9, 32 and 41(6), (8) and (10) of Directive 2009/73/EC for Trans Adriatic Pipeline project”, to take into consideration the Opinion of Energy Community Secretariat (no 1/2013) and European Commission Decision (C(2013)2949” by the approval of the document “Final Joint Opinion of the Energy Regulators on TAP AG's Exemption Application Autorita për l'Energia Elektrike e il Gas (Italy), Enti Rregullator i Energjisë (Albania) and Regulatory Authority of Greece (Greece)” as follows Final Joint Opinion.

- ERE Board Decision no.127, dated 07.11.2013 “On approving the tariffs methodology (TAP Tariff Code), proposed by TAP AG, according to the obligations defined on Final Joint Opinion” within the exemption procedure of TAP pipeline.
  - TAP AG request dated January 8 ERE protocol no. 56 dated 14.01 2014.
  - TAP AG request dated 5 February 2014 (protocol no. 56/1, dated 08.02.2014), on approving the final draft of the Regulatory Compliance Program first delivered on 15 November 2013 (Protocol no. 500/19). The same request and on the same form is submitted even to the Regulatory Authorities of Italy (AEEG) and Greece (RAE).
- The communication on date 8 September 2020, by which TAP AG sets available to the Authorities the compliance program prepared in conformity with the certification decision and submitted the candidate to be appointed as the compliance officer.

**Considering that:**

- TAP AG company submitted at ERE in conformity with Law no. 102/ dated, 23.09.2015 “On Natural Gas Sector” the request for exemption regarding the project of an interconnector passing from Greece and Albania to continue on Italy (as follows TAP pipeline) and as such for the exemption it is necessary the inclusion of the Regulatory Authorities (as follows the Authorities) for Greece the Energy Regulator Authority (as follows RAE) and for Italy the Authority for Energy, Gas and Waters (as follows AEEG)
- This request above all includes the exemption from Article 9.1 of Gas Directive (2009/73/EC) (as follows the exemption from the ownership unbundling condition).
- ERE with Board Decision no. 27, dated 01.03.2013, decided “the conditional exemption of TAP – AG company from the requirements of articles 9, 32 and 41 (6), (8) and (10) of Directive 2009/73/EC for Trans Adriatic Pipeline project”.
- With decision no. 64, dated 13.06.2013, ERE Board approved the Amendment of ERE Board Decision, no 27, dated 01.03.2013 “On the Conditional Exemption of TAP AG company” from the requirements of articles 9, 32 and 41(6), (8) and (10) of Directive 2009/73/EC, for Trans Adriatic Pipeline project”, to take into consideration the Opinion of Energy Community Secretariat (No.1/2013) and European Commission Decision (C(2013)2949”, by the approval of the document “Final Joint Opinion of the Energy Regulators” on the Application of TAP AG for the Exemption.
- Paragraph 4.5 of the Final Joint Opinion exempts TAP AG from the ownership unbundling obligation for a 25 year period from the moment of setting into operation of the pipeline infrastructure.
- Also Paragraph 4.5.1 of the Final Joint Opinion obliges TAP AG to impose into implementation operational unbundling before allocating the capacities as the result of the First Booking Phase provided on 17 March 2014, as communicated by TAP AG in the official letter dated 8 January 2014.

- **Especially the above mentioned paragraph of the Final Joint Opinion obliges TAP AG:**
  - 1) To draft a “Regulatory Compliance Program” which shall be submitted for approval to the three regulators to guarantee equal treatment of the participants at the Booking Phase and to prevent the flow of the commercial sensitive information to the shareholders.
  - 2) To assign a person that shall be responsible, Regulatory Compliance Officer (RCO), not later than one month from the date of approving the Compliance Program from the Regulators.
- **Also the above mentioned paragraph defines that the “Regulatory Compliance Program” shall at least define:**
  - a) The measures undertaken to guarantee equal treatment of the participants at the First Booking Phase.
  - b) The obligations to be fulfilled by TAP AG employees to comply with the abovementioned Program.
  - c) The person and the responsible body to control the Compliance Program and submit an annual report on the approved measures from the Regulators.
  - d) The principles regarding the tariff methodology and the rules to manage TAP AG commercial capacity.
- Referring especially to letter d) above, the program in question on one hand renews the tariff methodology principles defined on TAP Tariff Code (approved with ERE Board Decision no. 127, dated 07.11.2013) and on the other hand defines the capacities management rules object of the Network Code according to paragraph 4.7, point 1 of the Final Joint Opinion, TAP AG shall submit for approval from the Regulators not later than 1 year before the set into operation of the pipeline infrastructure.
- Lastly paragraph 4.5, point 2, of the Final Joint Opinion, provides that TAP AG shall be certified as a Independent Transmission System Operator (ITO) before the set into operation of the pipeline infrastructure but not later than 1 January 2018.
- On 5 February 2014 TAP AG company, in conformity with paragraph 4.5, point 1, of the Final Joint Opinion submitted a proposal of the Compliance Program to ERE, AEEG and RAE Authorities to provide the approval of this program.

**Accessing that:**

- The Regulatory Compliance Program is in conformity with the definitions of the Final Joint Opinion evidenced above (letters a-d) and above all provides that any possible amendment on its content is object of approval by the Regulators.
- The same attitude is held even by ARERA and RAE.
- It is necessary the approval of the proposed compliance program according to paragraph 4.5 of the Final Joint Opinion, attached to this decision to guarantee equal treatment of the participants on the First Booking Phase

For all of the above mentioned, ERE Board,

**Decided:**

1. To approve the “Regulatory Compliance Program” proposed by TAP AG, attached to this decision.
2. Notification of the Italian Energy Regulatory Authority (ARERA) and the Greek Energy Regulatory Authority (RAE) as well as TAP AG, regarding the undertaken of this Decision.
3. Legal and Settling the Disputes Directory shall inform the stakeholders about ERE Board Decision.

This decision enters immediately into force.