

REGULATION ON THE CERTIFICATION OF THE TRANSMISSION SYSTEM OPERATOR FOR GAS

CHAPTER I – GENERAL PROVISIONS

Article 1 (Regulatory scope)

- (1) The Regulation on Certification of the Transmission System Operator for Gas (hereinafter – “the Regulation”) establishes procedural requirements for the certification of the transmission system operator for gas in Albania, including terms and conditions for the submission of documents, data and information, as required for the certification procedures, to the Energy Regulatory Entity (hereinafter – “the ERE”).
- (2) The Regulation sets a list of documents, data and information to be submitted by the gas undertaking applying for its appointment and designation as the transmission system operator of Albania.
- (3) Issuance of the license for activities of the transmission system operator shall be regulated by the Licensing Rules² adopted by the ERE.

Article 2 (Application and interpretation)

- (1) The Regulation shall be applied to the authorised transmission system operator or to any undertaking, which applies for its appointment and designation as the transmission system operator.
- (2) Proper application of the Regulation shall be ensured, monitored and supervised by the ERE.
- (3) The Regulation shall be applied and interpreted in line with the provisions of the [Law on Natural Gas Sector Amendment of law Nr. 9946 dated 30.06.2008 “On Natural Gas Sector” (amended), Official Gazette of Albania, No [●] (hereinafter – “the Law”), legal acts regulating internal procedures and work organisation of the ERE, as well as duly following requirements of the European Union, interpretative notes and opinions of the European Commission, and in consultation with the Energy Community Secretariat (hereinafter “the Secretariat”).

Article 3 (Definitions)

All terms used in the Regulation shall be understood and interpreted so as defined by the Law, other applicable laws and their implementing regulations.

CHAPTER II – OBLIGATION FOR THE CERTIFICATION OF THE TRANSMISSION SYSTEM OPERATOR

Article 4

¹ Please note that all references to the Law on Natural Gas Sector Amendment of law Nr. 9946 dated 30.06.2008 “On Natural Gas Sector” (amended) (hereinafter – “the Law”), as provided in these Rules, are based on the final draft version of the Law as of April 2015. Further changes in the Law, if any, should be respectively reflected in these Rules before preparation of their final wording and adoption.

² Article 21 of the Law

(Obligation for the certification)

- (1) Before an undertaking is approved and designated as the transmission system operator by issuance of the appropriate license under the terms and conditions stipulated in the Law and the Licensing Rules adopted by the ERE, it shall be certified according to the procedure laid down in the Law³ and the Regulation.
- (2) Obligation established in paragraph (1) of this Article shall be applied to:
 - a) the transmission system operator, which was authorised for such activities before the Law came into force and subsequently applies for its appointment and designation following full implementation of the unbundling requirements under the Law⁴; or
 - b) the undertaking, which meets the qualification and unbundling requirements for the transmission system operator and, therefore, applies for its appointment and designation, or
 - c) the undertaking in charge of a new infrastructure for the natural gas transmission which was exempted from the ownership unbundling within the meaning of Article 30 of the Law (hereinafter “the exempted TSO”).
- (3) Unbundling of the transmission system operator shall be implemented under the terms and conditions stipulated in the Law and, where relevant, other applicable laws and their implementing regulations.

Article 5 (Application for the certification)

- (1) An undertaking referred to in paragraph (2) of Article 4 of the Regulation (hereinafter – “the applying undertaking”), following its implementation of all requirements for the unbundling of the transmission system operator, shall notify the ERE in written and shall submit:
 - a) written application for the certification of the transmission system operator;
 - b) documents, data and information listed in Chapter III of the Regulation; and
 - c) filled questionnaire for the certification of the transmission system operator in a form provided in the Annex to the Regulation, except in cases where the applying undertaking is the exempted TSO in the meaning of Article 30, which exemption decision envisages an unbundling model not stipulated in the Law, where the relevant questionnaire will be drawn up by the ERE, together with the Secretariat.
- (2) Application for the certification of the transmission system operator shall be submitted, as well as relevant certification procedures shall be processed independently from the licensing of the transmission system operator.

CHAPTER III – SUBMISSION OF DOCUMENTS, DATA AND INFORMATION

Article 6 (List of documents, data and information)

- (1) The applying undertaking, together with a written application for the certification of the transmission system operator, shall submit to the ERE the following documents, data and information:
 - a) certified copies of the documents of its incorporation and registration;
 - b) the list of licenses, permits and/or other authorisations obtained by the applying undertaking for activities in the energy sector of Albania and/or other countries, and certified copies of such licenses, permits and/or other authorisations;

³ Article 29.1 of the Law

⁴ Article 27.6 of the Law

- c) the list of its shareholders having at least [1/3] of the total shares and/or votes in the general meeting of the applying undertaking, also clearly indicating the shares and votes possessed by each of such shareholders;
 - d) the list of its shareholders from third countries, as the case may be, having at least 5% of the total shares and/or votes in the general meeting of the applying undertaking, also clearly indicating the shares and votes possessed by each of such shareholders;
 - e) the list of its shareholders without voting rights, where relevant;
 - f) the list of energy undertakings, which are under direct or indirect control by the applying undertaking, also clearly indicating the manner of the control and respective rights possessed by the applying undertaking;
 - g) the list of energy undertakings, if not visible from the list of shareholders, which have a direct or indirect control of the applying undertaking, also clearly indicating the manner of the control and respective rights possessed by such energy undertakings;
 - h) the list of other related energy undertakings (e.g. related group companies), also clearly indicating the manner of the relevant relations with the applying undertaking and level of mutual cooperation;
 - i) the list of licenses, permits and/or other authorisations obtained by energy undertakings, as referred to in subparagraphs f), g) and h) of this paragraph, for activities in the energy sector of Albania and/or other countries, and certified copies of such licenses, permits and/or other authorisations;
 - j) the copy of its shareholders' agreement or written approval by the chief executive officer (head manager) of the applying undertaking that such agreement has not been concluded;
 - k) copies of internal acts regulating work organisation of the collegial corporate bodies (supervisory board and/or management board) of the applying undertaking, if such acts are adopted;
 - l) the list of members of the collegial corporate bodies (supervisory board and/or management board) of the applying undertaking and of energy undertakings referred to in subparagraphs f), g) and h) of this paragraph;
 - m) decision of the general meeting of the applying undertaking (including the voting data), by which members of its collegial corporate bodies (supervisory board and/or management board) were appointed;
 - n) decision of the general meeting of the applying undertaking or its competent collegial corporate body (supervisory board and/or management board), by which the chief executive officer (head manager) of the applying undertaking was appointed;
 - o) copies of internal acts and procedures regulating activities of the corporate bodies of the applying undertaking, including those defining their rights of representation;
 - p) information about the chief executive officer (head manager) of the applying undertaking and other employees assigned with competences in organisational and administrative functions of the applying undertaking, or other persons assigned with such competences by the authorisation (power of attorney), *i.e.*:
 - (i) information of competences and functions assigned;
 - (ii) description of their any other professional and/or commercial activities;
 - (iii) declaration of interest stating that such persons do not participate in activities of energy undertakings engaged in the production, distribution and/or supply of natural gas and/or electricity;
 - q) copies of internal acts and procedures, which prevent from a disclosure of confidential or other commercially sensitive information to energy undertakings engaged in the production, distribution and/or supply of natural gas and/or electricity; and
 - r) information about employees of the applying undertaking, which came from other energy undertakings engaged in the production, distribution and/or supply of natural gas and/or
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electricity (clearly indicating such energy undertakings) during the continuous period of six (6) months before the submission date of the application for the certification.

- (2) In case the applying undertaking is a branch of the foreign company, as duly registered for commercial activities in Albania, it shall submit to the ERE the following documents, data and information:
 - a) documents, data and information of the foreign company, the branch of which is applying for the certification, as required under paragraph (1) of this Article; and
 - b) documents of the branch, as required under subparagraphs a), o), p), q) and r) of paragraph (1) of this Article.

Article 7
(Submission of documents, data and information)

- (1) All documents, data and information required under Article 6 of the Regulation shall be submitted to the ERE in Albanian and in English languages in written and in electronic form.
- (2) At any time during the certification procedure, the ERE and, as the case may be, the Secretariat may request from the applying undertaking and/or any other related energy undertakings for any additional documents, data and/or information relevant for the certification of the transmission system operator.
- (3) The applying undertaking or the certified transmission system operator shall notify the ERE about any change in the submitted documents, data and/or information immediately, but in any case not later than in five (5) days after such changes occurred, and shall submit the corrected documents, data and/or information.

CHAPTER IV – PROCEDURE OF THE CERTIFICATION

Article 8
(Applicable procedures of the certification)

- (1) The ERE shall certify the transmission system operator based on the procedures established in Article 29 [*Designation and certification of the TSO*] of the Law and the Regulation.
- (2) Procedures stipulated in legal acts regulating internal procedures and work organisation of the ERE shall be applied, but without any prejudice to paragraph (1) of this Article.

Article 9
(Decision on the certification)

- (1) The ERE shall adopt a decision on the certification of the transmission system operator within a period of four (4) months from the date of receipt of the application and proper submission of all required documents, data and information, as required under Chapter III of this Regulation.
 - (2) After expiry of the period specified in paragraph (1) of this Article, if no formal decision by the ERE is adopted, the certification shall be deemed to be granted based on the tacit decision of the ERE. The explicit or tacit decision of the ERE shall become effective only after conclusion of procedures set out in Article 29 [*Designation and certification of the transmission system operator*] of the Law and the Regulation.
 - (3) The explicit or tacit decision on the certification of the transmission system operator shall be notified without delay to the Secretariat by the ERE, together with all the relevant information with respect to that decision.
 - (4) Within four (4) months following the day of receipt of the notification referred to in paragraph (3) of this Article, the Secretariat shall deliver its opinion to the ERE as to its compatibility with respective requirements for designation and certification of the transmission system operator. In the absence of an opinion by the Secretariat within the period defined herein, the Secretariat shall be deemed not to raise objections to the decision of the ERE.
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- (5) Within two (2) months following the day of receipt of the opinion of the Secretariat, the ERE shall adopt its final decision regarding the certification of the transmission system operator, taking the utmost account of that opinion. Decision of the ERE and opinion of the Energy Community Secretariat shall be published together.
- (6) Where the final decision of the ERE diverged from the opinion of the Secretariat, the ERE shall provide and publish together with such decision the reasoning underlying its diverging decision and shall inform the Secretariat accordingly.
- (7) The final decision of the ERE on the certification of the transmission system operator and its following materials, as referred to in this Article, shall be published in the Official Gazette, on the website of the ERE and within a designated section of the website of the Secretariat.
- (8) Upon a separate request of the certified transmission system operator or by initiative of the ERE, the certification procedure may be followed by issuance of a new license to the transmission system operator or modification of existing license, as it may be required, based on the licensing procedures stipulated in the Licensing Rules adopted by the ERE.

Article 10
(Certification in relation to third countries)

The certification procedure in relation to third countries, *i.e.* in cases where the transmission system operator or, as the case may be, the transmission network owner is controlled by a person or persons from a third country or third countries, shall be implemented following Articles 8 and 9 of the Regulation taking into account specific requirements stipulated in Article 32 of the Law [*Certification in relation to third countries*] of the Law.

Article 11
(Reopening of the certification procedure)

- (1) The ERE, pursuing its competences in monitoring the continuous compliance of the designated transmission system operator with the requirements for its independence and unbundling, shall reopen a certification procedure to ensure such compliance in cases:
 - a) upon notification by the TSO pursuant to paragraph 2 of Article 31 of the Law [*Monitoring of unbundling of the TSO*];
 - b) on its own initiative where it has knowledge that a planned change in rights or influence over the TSO may lead to an infringement of respective requirements for independence and unbundling of the TSO, or where it has a reason to believe that such an infringement may have occurred; or
 - c) upon a reasoned request from the Secretariat.
- (2) For the purposes of this Article, a certification procedure reopened by the ERE shall be followed under Articles 8 and 9 of the Regulation.
- (3) Reopening of the certification procedure shall result in new decision on the certification of the transmission system operator, which may be followed by issuance of a new license to the transmission system operator, as referred to in paragraph (8) of Article 9 of the Regulation.

CHAPTER V – FINAL PROVISIONS

Article 12
(Protection of the confidential information)

- (1) In cases where documents, data and/or information, as submitted by the applying undertaking to the ERE or to the Secretariat, shall be treated as confidential or otherwise commercially sensitive information, the applying undertaking shall clearly indicate which particular part of documents, data and/or information shall be deemed as confidential or otherwise commercially sensitive.
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- (2) The ERE or the Secretariat shall have no obligation to treat those documents, data and information submitted by the applying undertaking as confidential or otherwise commercially sensitive, if the applying undertaking did not make respective indications required under paragraph (1) of this Article.
- (3) The ERE or the Secretariat shall have its right to treat any documents, data and/or information as confidential or otherwise commercially sensitive under its own discretion.
- (4) The ERE or the Secretariat shall protect the confidential or otherwise commercially sensitive information under the terms and conditions stipulated in the applicable laws. Such information may be disclosed only in cases required by the applicable laws.

**Article 13
(Liability)**

Breach of the requirements of the Regulation or any other related infringement may cause the liability of the guilty party under the terms and conditions stipulated in Article 99 [*Administrative Offences*] of the Law and/or other applicable laws.

**Article 14
(Entry into force)**

These Rules shall enter into force on the same day as the Law.

ANNEX

QUESTIONNAIRE FOR THE CERTIFICATION OF THE TRANSMISSION SYSTEM OPERATOR

I. General information:

(1) Please provide the following contact data:

a) name and address of an undertaking to be certified as the transmission system operator:

b) internet address of the website of the transmission system operator:

c) name, address, telephone number, fax number and e-mail address of, and position held by, the appropriate contact person in the transmission system operator:

II. Please fill the Form OU

(1) Ownership of the transmission system by the transmission system operator – Article 28 [Unbundling of the TSO] of the Law (Articles 9(1)(a) and 9(5) of the Directive 2009/73/EC⁵)

a) Regarding the ownership of the transmission system, please present the analysis:

- (i) specifying all transmission systems owned by the transmission system operator in Albania (also those under construction or not constructed before 6 October 2011), including interconnectors and separated transmission networks
- (ii) specifying transmission systems, which the transmission system operator owns (fully or partially) in other Energy Community Parties
- (iii) indicating all other owners of the given transmission system specifying the shares of each owner, in case the transmission system operator owns the transmission system only partially

(i): (ii): (iii):

b) Inform if the transmission system operator leases or rents any transmission systems from or to any other parties:

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c) In case the transmission system operator is a joint venture that belongs to two or more undertakings which own transmission systems in different Energy Community Parties inform, if all parts of this joint venture are transmission system operators approved under an ISO or ITO model; please name these companies and indicate the TSO status:

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(2) Control and ownership over the transmission system operator - Article 28 [Unbundling of the TSO] of the Law (Articles 9(1)(b)-(d), 9(2), 9(3) and 9(7) of the Directive 2009/73/EC)

a) It is required that the transmission system operator is not controlled by any person involved in the generation (production) or supply of gas and/or electricity. In order to establish the ownership and control over the transmission system operator it is required to establish list of all undertakings belonging to the same group⁶. Therefore the following information is requested:

- (i) list of all undertakings or persons controlling the transmission system operator, directly or indirectly

⁵ Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC

⁶ See the concept of control in the Commission Regulation 804/2004 implementing Council Regulation 9EC) No 138/2004 on the control of concentrations between undertakings (OJ L 133/1 of 30.4.2004)

- (ii) list of all undertakings active in Albania that are controlled, directly or indirectly
 - by these parties
 - by the transmission system operator
- (iii) list of all companies performing any of the functions of generation (production) or supply in case the same person directly or indirectly exercises control or any right over the transmission system operator and such companies

For each entry listed above in points (i)-(iii) the nature and means of control should be specified (e.g. voting rights, veto rights, holding of a majority share, powers to appoint members of the supervisory board, the management board or bodies legally representing the undertaking, *de facto* and *de jure* control, sole control or joint control)⁷.

The information sought in this section may be illustrated by the use of organisation charts or diagrams to show the structure of ownership and control of the undertakings. Please include the relevant legal provisions and indicate which information is confidential.

(i):

(ii):

(iii):

b) In case a public body is exercising the rights described in paragraph (6) of Article 28 [*Unbundling of the TSO*] of the Law (Articles 9(1)(b)-(d) of the Directive 2009/73/EC), the unbundling provisions require ensuring independence between the public body exercising those rights over transmission and over the generation (production) or supply activities. Therefore in case one or different central or local governmental bodies (e.g. Ministries) exercise those rights, it is necessary to introduce mechanisms ensuring such independence. In this respect please answer the following questions:

- (i) please describe briefly if public bodies directly or indirectly exercise control or any right over transmission, production and supply
- (ii) in case the central or local governmental bodies exercises those rights for undertakings involved in transmission, generation, production and supply, please:
 - describe in details which part of the governmental bodies exercises those rights over which undertakings
 - describe briefly the constitutional (legal, financial) interdependences between those parts of the governmental bodies
 - describe briefly how it is ensured that the rights described in paragraph (6) of Article 28 [*Unbundling of the TSO*] of the Law (Articles 9(1)(b)-(d) of the Directive 2009/73/EC), respectively in respect to transmission systems are exercised independently from generation, production or supply activities

(i):

(ii):

⁷ For further information please see the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (OJ C 95/1 of 16.4.2008)

(3) Tasks of the transmission system operator – Article 33 [TSO responsibilities] of the Law (Article 13 of the Directive 2009/73/EC)

a) The transmission system operator is required to operate the network in line with Article 33 [TSO responsibilities] of the Law (Article 13 of the Directive 2009/73/EC). Please:

- (i) describe briefly all tasks the transmission system operator fulfils and conclude on compliance with Article 33 [TSO responsibilities] of the Law (Article 13 of the Directive 2009/73/EC). Submit all relevant parts of all relevant regulatory provisions (laws, network codes, agreements between companies, statutes) showing that the transmission system operator has the full responsibility to fulfil the above listed tasks and clearly mark the relevant parts supporting the analysis
- (ii) show on the basis of applicable regulation that the ERE is equipped with powers, including ability to impose dissuasive fines, which it is able to apply when the transmission system operator is not fulfilling or not fully fulfilling the tasks and obligations specified in Article 33 [TSO responsibilities] of the Law (Article 13 of the Directive 2009/73/EC)

(i):

(ii):
