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**DECISION**

**No. 16, of date 13.03.2014**

**ON**

**APPROVING THE GUIDELINE FOR MANAGING AND ALLOCATING THE CAPACITIES IN TRANS ADRIATIC PIPELINE (TAP) PROJECT FOR THE FIRST BOOKING PHASE ACCORDING TO “FINAL JOINT OPINION” WITHIN THE EXEMPTION PROCEDURE OF TAP PIPELINE**

**ERE’s Board of Commissioners, on its meeting of date 13.03.2014,**

**Implementing:**

- Directive 2009/73/EC of the European Parliament and of the Council of date July 13 2009 (in the following content: Directive 73/09);
  - Regulation 713/2009/EC of European Parliament and of the Council of date July 13 2009
  - Regulation 715/2009/EC of European Parliament and of the Council of date July 13 2009.
  - Law no. 9946, of date 30.06.2008“For natural gas sector”, as amended;
  - Decision no. 39, of date 23.04.2012 “For Approving the Guideline for Managing and Allocating Capacities in Trans Adriatic Pipeline (TAP) project according to paragraph 6 of article 36 of Directive 2009/73/EC”;
  - Decision No. 27, of date 01.03.2013, of ERE Board of Commissioner, “For approving the binding 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;
  - European Commission decision C (2013) 2949 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” ;

- Electricity Community Secretariat Opinion (no 1/2013) of date May 14 2013;
- Decision no. 64, of date 13.06.2013, of ERE's Board of Commissioners "For amending ERE's Board of Commissioner 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 Directive 2009/73/EC for Trans Adriatic Pipeline" project, to take in consideration Electricity Community Secretariat Opinion (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)" as follows Final Joint Opinion;
- Decision No. 127 of date 07.11.2013 "On approving the tariff methodologies (TAP Tariff Code), proposed by TAP AG, according to the obligations defined in "Final Joint Opinion" within the procedure of exempting TAP Pipeline;
- Decision No. 12, of date 14.02.2014 on reviewing and approving "REGULATORY COMPLIANCE PROGRAMME" submitted from TAP AG based on "FINAL JOINT OPINION" within the procedure of exempting TAP Pipeline.

### **Considering that:**

- TAP AG company has submitted at ERE in conformity with Law no. 9946, of date 30.06.2008 "For Natural Gas Sector" the exemption request regarding the interconnection project that passes through Greece, and Albania to continue in Italy (as follows TAP Pipeline) and as such because of the exemption it is necessary the inclusion of regulator authorities (as follows Authorities) for Greece Energy Regulator Authority (as follows RAE) and for Italy the Authority for Electricity, Gas and Waters (as follows AEEGSI) ;
- Article 36, paragraph 6 of Directive 73/09 foresees that the Regulator authority before allowing an exemption to approve regulations and mechanisms:
  - I. For capacity allocation, which require to invite all the possible users of infrastructure to express their interest for using the capacity to be performed before allocation of this capacity in new infrastructure, including for own use (here the following: testing market).

- II. For managing the capacities, that include the right of the owner to sell the unused capacities in the secondary market and the obligation to offer the unused capacity in the market in case of “contractual congestion”;
- The above provision also requires that in the criteria evaluation on granting the requested exemption, regulator authorities should take into consideration the results of capacity allocation procedure;
  - In accordance with the above provisions, it is developed a first non - binding stage of Market testing (*Expression of interest phase*), in which all the potential users of TAP Pipeline were invited to express their interest for using the capacities of this infrastructure, and in relation to the capacities offered by TAP and in the proposals for different types of offered products.
  - At the end of first market testing stage (Expression of Interest Phase), after ERE described completed the conditions of article 36 point 6 of Directive 73/09, with Decision no. 64, of date 13.06.2013 of Final Joint Opinion, has expressed a positive opinion for the issue of formal decision on the exemption in favour of TAP AG company;
  - The above mentioned “Final Joint Opinion” foresees even a second market testing stage, in which all the participants of the first stage are invited to submit the requests for booking the pipeline capacity (TAP “Booking Phase”);
  - In implementing the execution of the First Booking Phase, planned for March 17 2014, ERE has prepared together with RAE and AEEGSI “the Guidelines for management and allocation of capacity of the Trans Adriatic Pipeline (TAP) project according to paragraph 6 of Article 36 of the Directive 2009/73/EC –Phase II: invitation to interested Parties to submit binding booking request for capacity products” ( here the following: the Guideline), that on his part aims to determine the general principles that TAP AG shall observe on drafting the procedure for participation in the Booking Phase and managing the available allocation capacities of the pipeline;
  - In particular, the above mentioned Guideline determines the following principles:
    1. In the pipeline allocation capacities, the offered products reflect those for which the participants of “Expression of Interest Phase” have expressed their interest and in particular, the ongoing capacities shall be allocated for long term contracts of ship-or-pay type respectively for a period of 5, 10, 15, 20 and 25 years and commercial reverse flow capacities with ship or pay contracts for the same duration;

2. Participation in the second market test stage is booked for the persons that participated in the first booking stage, and for the network operators that are certified in conformity with the respective obligations of each state according to Directive 73/09;
  3. TAP AG is obliged to draft the booking phase notice the procedures for participating in the Booking Phase procedures, for managing the available allocation capacities of the pipeline and also is responsible for the right implementation of the procedures involved in it;
  4. TAP AG ensures successful winners of reserved capacities, their availability within 6 months from the time when the exempted capacity is set available and in case of failure to meet this deadline ensures the compensation for the users;
  5. The allocated capacity should be in conformity with the capacity caps defined in paragraph 4.7 of Final Joint Opinion;
- The guideline is subject to the appraisal of the persons that have the right to take part in the Booking phase (that means, the participants in the first market testing stage and in the certified network operators) to collect their comments;
  - The comments collected from the participants by the above mentioned stages, in general have evidenced the need to get further explanations regarding some certain aspects of the guideline,
  - As result of the above mentioned acknowledgement process, the Guideline is amended, together with AEEGSI and RAE, considering the comments made by the Regulators.
  - In contrast to what was proposed in the Guideline delivered for consultation (to the potential participants), regarding the First Booking Phase, the authorities have decided that the offers to be ranked based on the Net Current Value for capacity unit without using bid, and this solution ensures the simplicity of the procedure and encourages the maximum usage capacity during the exemption period, taking into consideration TAP obligation to build additional capacities in conformity with paragraph 4.1.5 of Final Joint Opinion.

## **Appraising that:**

- Together with RAE and AEEGSI are defined the general principles that TAP AG should follow to implement the procedure for participation in the Booking Phase and for managing and allocating the available capacities for the pipeline, in "the Guidelines for management and allocation of capacity of the Trans Adriatic Pipeline (TAP) project according to paragraph 6 of Article 36 of the Directive 2009/73/EC – Phase II: invitation to interested Parties to submit binding booking request for capacity products" that are attached to this decision;

## **Decided:**

1. To approve “Guidelines for management and allocation of capacity of the Trans Adriatic Pipeline (TAP) project according to paragraph 6 of Article 36 of the Directive 2009/73/EC – Phase II: invitation to interested Parties to submit binding booking request for capacity products”, attached to this decision.
2. The notification of Italian (AEEGSI) and Greek (RAE) Regulator Authorities and TAP AG, for taking this Decision.
3. This decision enters immediately into force and is published in the Official Gazette.